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TESIS DOCTORAL

**European Union immigration policy. The use of experiences
of the EU for non-EU countries (considering the example of
Russia)**

MEMORIA PARA OPTAR AL GRADO DE DOCTOR

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Resumen de Tesis Doctoral.

Escrita por Dina Tikhonovskova.

“La política migratoria de la Unión Europea. El uso de las experiencias de la Unión Europea en países no pertenecientes a ella (considerando a Rusia como ejemplo)”

Esta tesis doctoral estudia uno de los temas de mayor actualidad de la Unión Europea: la regulación de la inmigración de personas a la Unión Europea.

La estructura de la tesis: la tesis consta de una introducción, cuatro capítulos, conclusión, bibliografía y apéndices.

En el primer capítulo se examina la dinámica de las políticas de inmigración de la UE a partir del Tratado de Maastricht y el Tratado de Lisboa, así como las características de las principales áreas de la política de inmigración de la UE.

El segundo capítulo contiene enfoques teóricos de la regulación de la inmigración en los Estados Miembros de la Unión Europea. Además, esta parte de la tesis doctoral incluye un análisis de la práctica de la aplicación de estos enfoques, en particular elabora un aspecto del tema de la solución de problema de inmigración en Estados Unidos como uno de los ejemplos más interesantes de regulación de la inmigración.

El tercer capítulo repasa el Reglamento para la integración de los trabajadores cualificados de terceros países (no UE) en la Unión Europea.

La investigación comprende una amplia gama de temas. De este modo permite investigar las principales tendencias de la política de inmigración de la UE y, a su vez, nos pone en perspectiva con respecto a un posible aumento de la cooperación entre la Unión Europea y Rusia en lo referente a la administración de la migración. También se tiene en cuenta la posible reutilización por parte de Rusia de la experiencia de la UE en el control de los procesos de inmigración. Todo esto está incorporado en el cuarto capítulo, en el que Rusia se estudia en el contexto de la política de inmigración de la Unión Europea.

La investigación de la tesis indica la necesidad de un enfoque integrado para resolver la cuestión de la inmigración en la Unión Europea. Se confirma la relevancia del tema elegido por los siguientes aspectos:

La Unión Europea se enfrenta a nuevos retos derivados de la globalización general y de la mayor colaboración entre los Estados. Uno de estos retos es la intensificación de los movimientos migratorios. La eficacia de la política de inmigración de la Unión Europea influye significativamente en los procesos de consolidación de la sociedad de toda Europa. Cuando los inmigrantes forman parte sustancial de la población, su participación en la sociedad se vuelve crucial.

Para lograr el propósito ya mencionado, la tesis cumple los siguientes objetivos:

- Se exploraron las tendencias clave de la política de inmigración de la UE;
- Se realizó una revisión exhaustiva de las políticas de inmigración en la UE a nivel nacional, interestatal y supraestatal, así como su apoyo regulatorio e institucional;

- Se investigó la categoría de "Integración" en el contexto de la política de inmigración de la UE en relación con los inmigrantes incluidos en el proceso de adaptación al sistema político y la cultura política del país receptor;
- Se analizó la política de inmigración a nivel nacional y supranacional;
- Consideración del mercado de trabajo de la Unión Europea en materia de política de inmigración;
- Se analizó la interacción entre la UE y Rusia con respecto a la regulación de la inmigración y también la posibilidad de aplicar las experiencias de los Estados miembros de la UE a Rusia.

En la tesis doctoral analizo la posibilidad de establecer un sistema de apoyo a los inmigrantes dividido en varias etapas. Analizo el requisito de implementar una inversión financiera significativa.

Claramente, debería aplicarse una regulación a nivel supranacional, así como a nivel estatal, sin contradicciones entre ellas. Examinó los cuerpos de ley en la materia y resalto los puntos cruciales.

Rusia debe aún construir esta cooperación con la UE en la administración de la migración conforme a las tesis acordadas, pero seguramente existen numerosas soluciones sin explorar.

La cooperación entre la UE y Rusia tomó forma a través de un diálogo permanente sobre el modo de resolver problemas comunes de inmigración. Pero, una vez expirado en 2014 el Acuerdo de Asociación y Cooperación entre la UE y Rusia, tras 10 años de vigencia, las relaciones UE-Rusia han experimentado serias dificultades.

En la tesis analizo sistemáticamente lo que se ha probado hasta ahora, lo que tuvo éxito y pondero las posibles nuevas soluciones basándome en el pasado.

La importancia de esta tesis se ve confirmada por los siguientes factores:

- Hay una interpretación del concepto de "integración" como un proceso de la inclusión de los inmigrantes de terceros países (no UE) en la comunidad receptora;
- La autora de la tesis analiza la situación política de los inmigrantes en los países de acogida y los mecanismos de regulación de la UE para la obtención de la ciudadanía;
- Se estudia la experiencia del uso de las regulaciones del mercado laboral de la UE como parte de la política migratoria de estado a nivel nacional y europeo supranacional;
- Hay un intento de determinar las prioridades para la UE en el contexto de cuestiones de inmigración, así como para definir las tendencias claves del desarrollo de la Unión Europea en cuanto a la regulación de la inmigración.

En conclusión, la autora expresa su preocupación por el hecho de que, incluso con los programas, las leyes y las políticas de inmigración de las instituciones existentes en diferentes partes de Europa, estas aún carecen de eficacia.

Respondiendo a las preguntas planteadas al inicio de la tesis, cabe señalar que existe una necesidad urgente de regular los flujos de migración en la UE. La clave es la puesta en marcha de una política común de la Unión Europea adecuada a la realidad moderna con el fin de crear un mecanismo sistemático de "entrada" y "adaptación" de los inmigrantes en la UE.

Habiendo examinado la situación de la inmigración de personas en la Unión Europea, debemos especificar su complejidad. Sin embargo, en el caso de un adecuado mecanismo de control sobre flujos migratorios y la integración de los inmigrantes, es posible estabilizar la situación en la sociedad europea. La cuestión principal es cómo se debe desarrollar este mecanismo.

Habiendo examinado las direcciones principales de la dinámica de la política migratoria de la UE, es necesario sacar una conclusión acerca de las tendencias de cambio en la regulación de la cuestión de la inmigración en la Unión Europea. Previamente hemos hablado del dominio de la aplicación de la política de inmigración. La regulación se ha ocupado, principalmente, de la repatriación de inmigrantes que han llegado de forma ilegal a la UE, la protección de fronteras exteriores y la toma de medidas eficaces para impedir la infiltración de personas procedentes de terceros países (no UE) en la UE. Actualmente todas estas áreas están en evolución, con mayor énfasis en la organización de los permisos de trabajo de los inmigrantes legales, así como la integración de los inmigrantes ya residentes en la UE. La aplicación de ciertas medidas en esta dirección es un paso positivo hacia el establecimiento de una política común de inmigración, pero es necesario crear programas adicionales para promoverlo.

Por ejemplo, teniendo en cuenta la demanda de mano de obra en la UE, sería lógico organizar estas relaciones en la sociedad europea mediante la creación de un documento específico –similar al programa de la "Blue Card" (tarjeta azul), pero para los trabajadores de base (profesiones no cualificados). Al mismo tiempo, basándonos en los resultados de la investigación, se puede argumentar que esta única medida no puede resolver por completo la cuestión de la inmigración. No debemos simplificar el problema: las diferencias lingüísticas, culturales, religiosas, domésticas, que a menudo son como una fuente de incomprensión mutua, complican la interacción entre las personas. Pero, además, la migración activa de países en desarrollo implica que la mayor parte de la población "extranjera" se concentra en la parte inferior de la pirámide social. Esta es tal vez la principal dificultad, que aumenta con el crecimiento de la escala y la velocidad de migración.

En este sentido, es de particular importancia la cuestión de la integración de los inmigrantes en la sociedad europea. Justificar la conclusión de que actualmente la principal forma de política de integración en la Unión Europea es la integración con un predominio de asimilación de elementos a largo plazo (cuestión de fondo en el abandono de la política del multiculturalismo en el ejemplo canadiense).

En este trabajo se analizan temas de inmigración, tanto a nivel nacional como supranacional. En cuanto a la regulación a nivel nacional, es esencial tener en cuenta en esta fase la necesidad de rechazar una la visión del mundo "centrada en

la nación" para poder generar una política de estado efectiva en cuanto a la migración.

Es evidente que tales cambios requieren de mucho tiempo, ya que deben abordar no sólo el concepto de estado sobre la regulación de la migración, sino también la percepción a nivel de la ciudadanía. En este sentido, se considera una tendencia positiva la formación de una nación de co-ciudadanía, no sólo a nivel de la UE sino en los diferentes estados de la UE.

Tras el análisis concerniente al tema presentado, hay que aclarar que es necesario alcanzar una solución *integral* sobre la inmigración en la Unión Europea: la aplicación de una regulación integral, tanto a nivel político como legal; la unificación de esfuerzos de todos los estados miembros para desarrollar una política común de migración; la promoción de acuerdos con terceros países (no UE) – proveedores de inmigrantes ilegales; el desarrollo de la base institucional y material para la integración de los inmigrantes en la sociedad europea, etcétera.

Como consecuencia, el territorio ruso debería trabajar en cooperación con la UE. La cooperación entre Rusia y la UE para hacer frente a problemas comunes de inmigración debe plantearse como un continuo diálogo. Ahora es necesario determinar la fase inicial de la cooperación en pos de una solución a la cuestión de la inmigración.

Se establecen los marcos institucionales de cooperación entre las partes: el acuerdo de cooperación con FRONTEX, EUROPOL con las autoridades de la Federación Rusa; trabajos en el marco del Consejo de Asociación Permanente UE-Rusia. Por ejemplo, actualmente existe una cooperación real a gran escala entre Rusia y la Unión Europea. Es importante involucrar a la UE en la protección no sólo de las fronteras comunes, sino sobre todo de las problemáticas fronteras de la Federación Rusa que sirven como "puertas" para los inmigrantes ilegales, cuyo objetivo final, en muchas ocasiones, es usar a Rusia como puente para llegar a la UE.

Otro aspecto importante de la cooperación es construir un diálogo de reflexión sobre cuestiones relacionadas con los visados entre la UE y Rusia. La clave en este proceso es frenar la excesiva politización de los asuntos relacionados con los visados. Muchas de las dificultades en este aspecto podrían solucionarse con el uso del ya existente marco para la simplificación del cruce de fronteras. Por ejemplo, en lugar de las insistentes propuestas sobre la simplificación completa del régimen de visados para los ciudadanos rusos que quieran entrar a la UE, es más eficaz apoyar la idea de conceder visados a largo plazo de un año o más.

Los problemas de migración tienen un papel cada vez más importante y es necesario establecer un nuevo nivel cualitativo de relaciones entre Rusia y la Unión Europea.

Como resultado de la presente tesis es importante destacar que la legislación de inmigración rusa está bien diseñada, pero al mismo tiempo hay aspectos prácticos de la realización de esta política que deben mejorarse.

Dado que es necesaria una aproximación de la legislación de inmigración de Rusia y la UE hay que establecer mecanismos legales y de organización para una

armonización de la ley. Rusia debe desarrollar un programa de armonización de la ley de inmigración que incluya sólo las experiencias que hayan resultado eficaces en la regulación migratoria de la UE.

Al mismo tiempo, la legislación rusa solo debe aceptar ejemplos de la legislación de la UE aplicables a la realidad rusa.

Tras un análisis de las tendencias actuales en los mercados laborales de la Unión Europea y Rusia, se ha identificado la creciente demanda de especialistas altamente cualificados en condiciones de crisis económica y el aumento del desempleo no solo en la UE, sino también en Rusia. La necesidad de personal cualificado ha alcanzado una escala internacional.

Rusia está en la etapa inicial de reformas en lo referente al empleo de mano de obra cualificada extranjera. En vista de las similitudes entre la UE y Rusia en cuanto a las condiciones demográficas, territoriales y culturales, así como de los estrechos lazos económicos, la experiencia de la UE en la cuestión que nos ocupa es muy relevante para el estudio y el uso práctico teniendo en cuenta las particularidades de Rusia.

El documento presenta un análisis exhaustivo de la regulación del empleo de especialistas cualificados de terceros países en la Unión Europea y en particular describe en detalle las disposiciones de la Directiva del Consejo 2009/50/EC del 25 de mayo de 2009 sobre las condiciones de entrada y residencia de nacionales de terceros países para fines de empleo altamente cualificado (la "EU Blue Card Directive" la directiva de la tarjeta azul de la UE) y su sistema de aplicación desde junio de 2011.

Además de las acciones legales de la Unión Europea también se investigaron los métodos relacionados y las medidas destinadas a la reproducción de los recursos laborales cualificados: cuestiones de reunificación familiar, conjunto de programas educativos, Europass, etcétera.

También se consideró el cuerpo legislativo sobre el empleo extranjero altamente cualificado en Rusia. La atención se centra en la modificación de la Ley Federal N° 115-FZ de fecha 25 de julio de 2002 "Sobre el estado legal de ciudadanos extranjeros en la Federación Rusa" y la introducción del concepto de "especialista altamente cualificado" de julio de 2010. Se estimaron las siguientes actividades complementarias: el programa estatal de prestación de asistencia para el reasentamiento voluntario de compatriotas en la Federación Rusa, y la infraestructura necesaria para garantizar la adaptación y la integración de los inmigrantes en la sociedad rusa, entre otros.

Lo notable es que las últimas reformas en Rusia son de naturaleza progresiva, sin embargo, al evaluar la experiencia de la UE, parece oportuno realizar los siguientes ajustes en la legislación interna y el establecimiento del sistema de empleo extranjero altamente cualificado en Rusia:

- Aprobar el concepto de proyecto de política de migración de estado de la Federación Rusa para el período que va hasta el 2025, desarrollado por la organización sin ánimo de lucro "OPORA DRUZHBY" (АНО «ОПОРА ДРУЖБЫ»), como documento básico;

- Sistematizar y consolidar normas y requisitos en el ámbito del empleo de especialistas extranjeros altamente cualificados o desarrollar una iniciativa de guía similar a la Directiva de tarjeta azul de la UE. En paralelo, proporcionar acceso a la legislación a través de un recurso específico en Internet, incluso en una lengua extranjera;
- Ajustar los criterios para el estatus de "especialista altamente cualificado" cambiando el enfoque del componente financiero en favor de medidas y necesidades provisionales o diferenciar el flujo de profesionales altamente calificados en una serie de categorías, teniendo en cuenta los intereses de los negocios y las regiones que lo necesiten (pueden combinarse con la lista de requisitos de mano de obra publicada anualmente);
- Revisar las limitaciones establecidas en la legislación de la Federación Rusa para el empleo de especialistas extranjeros altamente cualificados empleados por organizaciones de comercio al por menor;
- Desarrollar garantías para los miembros de las familias de especialistas altamente cualificados;
- Prestar especial atención a la obligación de recepción de un permiso de trabajo para los empleados extranjeros por parte de las autoridades migratorias;
- Sustituir la necesidad de informar a la autoridad ejecutiva en materia de migración sobre el cumplimiento de las obligaciones del empleador trimestralmente, por la posibilidad de remisión del empleado a las autoridades competentes en caso de violación de las obligaciones;
- Crear un único centro acreditado de mediación de empleo para ayudar a los especialistas extranjeros altamente cualificados análogo al centro de empleo de la tarjeta azul internacional;
- Resolver el problema de apoyo a la información mediante la realización de una investigación orientada a determinar de forma integral la dotación de recursos y la organización de personal a nivel sectorial y regional (presupuesto de trabajo);
- Crear las infraestructuras necesarias para garantizar la adaptación y la integración de los inmigrantes en la sociedad rusa e implantar mecanismos jurídicos y administrativos eficaces (integración laboral, vivienda, adaptación e integración cultural, etcétera.);
- Introducir un análogo de Europass para integrar a los ciudadanos rusos en el sistema europeo y mejorar la movilidad interna de los recursos laborales;
- Fortalecer el vínculo entre educación y mercado de trabajo.

Dado que Rusia forma parte del mundo global, el flujo de recursos cualificados es, hasta cierto punto, inevitable. El objetivo del legislador es transformar una posible emigración intelectual en un intercambio intelectual. La estrategia en la que todos ganan (win-win) en lugar de perder es posible con los países importadores de los recursos intelectuales rusos si una proporción significativa de migrantes regresa a Rusia después de llevar a cabo su trabajo (o sus estudios) en el extranjero. Será una transferencia no sólo de aptitudes

individuales y de educación, sino también de tecnologías y soluciones innovadoras. Reconocer la experiencia de la Unión Europea para cambiar la legislación y mejorar el sistema de empleo de trabajadores cualificados en Rusia ayudará a la Federación Rusa a competir en el mercado internacional de las fuerzas de mano de obra cualificada.

Summary of Ph.D. thesis
written by Dina Tikhonovskova
**"European Union immigration policy. The use of experiences of the EU for
non-EU countries (considering the example of Russia)"**

This Ph.D. thesis revealed one of the most topical issues of the European Union - the issue of regulating the immigration of people to the European Union.

The structure of the dissertation research: the thesis consists of an introduction, four chapters, conclusion, bibliography and appendices.

The dynamics of the EU immigration policy, starting from the Maastricht Treaty and up to the Lisbon Treaty were examined in the first chapter of the thesis, as well as the features of the main areas of the EU immigration policy.

The second chapter contains theoretical approaches to immigration regulation in the various Member States of the European Union. In addition, this part of the dissertation includes an analysis of the implementation of these approaches, in particular, it will elaborate on the immigration issue settlement in the USA, as one of the most interesting examples of immigration regulation.

The third chapter identifies regulations for the integration of skilled workers from third (non-EU) countries into the European Union.

The research comprises a wide range of issues. Thereby, it allows for research of the main trends of the EU immigration policy that, in its turn, was able to draw a perspective in respect of the outlook of further co-operation between the European Union and Russian Federation on the migration administration. The possible reuse by Russia of the EU experience in the immigration processes control was considered as well. This all is a theme of fourth chapter where Russia was observed in the context of European Union immigration policy.

The Ph.D. thesis's research indicates the necessity of an integrated approach to be used to resolve the immigration issue in the European Union.

The relevance of the chosen subject is confirmed by the following:

The European Union faces new challenges arising from the general globalization and increased collaboration between states. One of these challenges is the intensification of migratory movements. Efficiency of immigration policy of the European Union significantly influences the processes of all-European societal consolidation. When immigrants constitute a substantial part of the population, their integration into society becomes crucial.

In order to achieve the aforementioned goal, the following objectives were accomplished in the thesis:

- Key trends of the EU immigration policy were explored;
- A comprehensive review of immigration policy in the EU at the national, interstate and supranational levels, as well as its regulatory and institutional support was conducted;
- The "Integration" category was investigated in the context of the EU immigration policy, in relation to immigrants included in the process of adapting to the political system and the political culture of the recipient country;

- Immigration policy at the national and supranational level was analyzed.
- Consideration of the European Union labour market in terms of immigration policy.
- The interaction between the EU and Russia regarding immigration regulation and also the possibility of applying the experiences of the EU Member States to Russia was thoroughly analyzed.

In the Ph.D. thesis, I analyze the possibility of setting up a multi-stage system for the support of immigrants. I analyze the requirement imposing a significant financial investment to be implemented.

Clearly, regulation should be implemented on a supranational level as well as at the state level without contradictions among it, I reviewed the law corporuses on the matter and highlight crucial points.

Russia is to build up cooperation with the EU on migration administration in compliance with agreed theses, but surely a lot of unspoken and untested solutions exist.

The co-operation between the EU and Russia took the form of a permanent dialogue, by way of solving mutual problems of immigration. But after the Agreement on partnership and cooperation between EU and Russia¹ expired in 2014 after 10 years of service, EU-Russia relations have undergone serious difficulties.

In this thesis, I systematically analyzed what has been tried so far, what was successful and weighted possible new solutions on the basis of the past.

The significance of the current thesis can be confirmed by the following factors:

- there is an interpretation of the concept of "integration" as a process of the inclusion of migrants from third (non-EU) countries into the recipient community;
- the author of the thesis analyzed the political status of immigrants in the host countries and the EU regulatory mechanisms of obtaining citizenship;
- experience of using regulations of the EU Labour Market as a part of the state migration policy at national and European supranational level was studied;
- there is an attempt to determine the priorities for the EU in the context of immigration issues, as well as to define the key trends of the European Union development, in terms of immigration regulation.

In conclusion, the author expresses their concerns over the fact that even with existing programmes, laws and institutions, immigration policy in different parts of Europe is still lacking efficiency.

Answering the questions stated at the start of the thesis, it is worth noting that there is an urgent need to regulate migration flows at the EU level. The key is

¹ Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part - Protocol 1 on the establishment of a coal and steel contact group - Protocol 2 on mutual administrative assistance for the correct application of customs legislation - Final Act - Exchanges of letters - Minutes of signing.

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holding the European Union common policy, adequate to modern realities, to create a systematic mechanism "input" and "adaptation" of immigrants in the EU.

Having considered the situation with the immigration of people into the European Union, we should specify its complexity. However, in the case of a proper mechanism of control over immigration flows and integration of immigrants, it is possible to stabilize the situation in the European society. The main question is how this mechanism should be developed.

Having examined the main directions of the immigration policy of the EU, it is necessary to draw a conclusion about the changing trends in the regulation of the immigration issue in the European Union. Previously, we had to talk about the dominance of enforcement in immigration policy. Regulation has primarily concerned the repatriation of illegally arriving immigrants into the EU, external border protection and carrying out effective measures to prevent the infiltration of persons from third (non-EU) countries into the EU. Currently, all these areas are evolving, with more emphasis on arranging the order of work with legal migrants, as well as the integration of already residing in the EU immigrants. The implementation of certain steps in this direction is a positive measure towards establishing a common immigration policy, but it is necessary to create additional programs for promoting it.

For example, taking into account manpower demand in the EU, it would be rational to organize these relations in the European society by creating a thought-out document – similar to the "Blue Card" program, but for the base workers (not highly qualified professions). At the same time, based on the findings of the research, it can be argued that this single measure is not able to solve the immigration issue completely. We should not simplify the problem: differences in language, cultural, religious, household traditions, which often serve as a source of mutual misunderstanding, complicate the interaction between people. But, in addition, active migration from developing countries means that the bulk of the "alien" population is concentrated in the bottom of the social pyramid. Perhaps this is the main difficulty, which increases with increasing the scale and the speed of migration.

In this regard, of particular importance is the question of the integration of immigrants into European society. Justifying the conclusion that currently the main form of integration policy in the EU is the integration with a predominance of elements aimed at long-term assimilation (in the background of the abandonment of the policy of multiculturalism in the Canadian sample).

In this paper, we examined immigration issues, both at supranational and national level. At the national level of regulation, it is necessary to consider that at the present stage, the rejection of the "nation-centric" worldview is essential in the formation of an effective state migration policy.

It is obvious that such changes will require quite a long time, since they must touch not only the state concept towards the migration regulation, but also the perception of the level of common people. In this light, the formation of the nation-co-citizenship not only at the EU level but in individual states in the EU is seen as a positive tendency.

Following the consideration of the claimed subject matter, it should be stated that it is necessary to achieve a *comprehensive* solution on immigration in the European Union: the implementation of a comprehensive regulation, both at the political and legal level; unification of efforts of all EU Member States to develop a common migration policy; promotion of agreements with third (non-EU) countries – suppliers of illegal immigrants; the development of the institutional and material base for the immigrants integration into the European society, etc.

Accordingly, the Russian side should work in cooperation with the EU. Cooperation between Russia and the EU in addressing common problems of immigration manifesting in a continuous dialogue. Now it is necessary to ascertain the initial stage of cooperation towards solving the immigration issue.

Institutional frameworks for cooperation between the parties are established: the cooperation agreement with FRONTEX, EUROPOL and with authorities of the Russian Federation; work within the framework of the EU-Russia Permanent Partnership Council. Thus, for example, real large-scale border cooperation between Russia and the European Union is currently absent. It is important to involve the EU in the protection of not only joint, but especially of the problematic borders of the Russian Federation, which serve as "gates" for illegal immigrants, the ultimate goal of whom is sometimes entry into the EU.

Another important aspect of cooperation is to build a thoughtful dialogue on visa issues between the EU and Russia. The key in this process is the curbing of excessive politicization of the visa issues. Many of the difficulties in this direction can be lifted when using the existing framework of the simplification of border-crossing. Instead of the insistent proposals on the complete simplification of the visa regime for Russian citizens when entering the EU, it is more effective, for example, to support of the idea of granting long-term visas for a year or more.

While the migration problems are playing an increasingly important role, it is necessary to establish a qualitatively new level of relations between Russia and the European Union.

Based on the results of the current thesis it's important emphasize that Russian immigration legislation was built quite well, but at the same time, work needs to be done on practical aspects of the realization of this policy.

In order to develop Russian and EU immigration legislation, it's necessary to set up organizational and legal mechanisms of harmonization of law. Russia should develop the program of harmonization of immigration law.

At the same time, Russian law should only accept the examples of EU legislation that are applicable to Russian reality.

Analyses of current trends in the labour markets of the European Union and Russia have identified the increasing demand for highly skilled specialists in conditions of economic crises and rising unemployment not only in the EU but also in Russia. Competition for qualified personnel has reached an international scale.

Russia is at the initial stage of reform in the employment of skilled foreign labourers. In view of similar demographic, territorial and cultural conditions of Russia and the Union, as well as close economic ties, the EU's experience in this

part of the subject matter is very relevant for study and practical use taking into account the peculiarities of Russia.

The paper presents a comprehensive analysis of the regulation of employment of skilled specialists from third countries to the European Union, and in particular describes in detail the provisions of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (The "EU Blue Card Directive") and its implementation system since June 2011.

In addition to the European Union legal acts the related methods and measures aimed at the reproduction of qualified labour resources: issues of family reunification, joint educational programmes, Europass, etc were also investigated.

The body of legislation on the foreign highly qualified employment in Russia was also considered. The attention is focused on the amendments to the Federal Law No. 115-FZ dated 25 July 2002 "On Legal Status of Foreign Citizens in the Russian Federation" and the introduction of the concept of "highly qualified specialists" from July 2010. The supplementary activities were studied: The State program on rendering assistance to voluntary resettlement to the Russian Federation of compatriots, the infrastructure required to ensure adaptation and integration of immigrants into Russian society and so on.

The remarkable thing is that the latest reforms in Russia are of a progressive nature, however, assessing the EU experience, it seems appropriate to make the following adjustments to domestic legislation and the establishment of the system of foreign highly qualified employment in Russia:

To approve the draft concept of state migration policy of the Russian Federation for the period till 2025, developed by the nonprofit organization "OPORA DRUZHBY" (АНО «ОПОРА ДРУЖБЫ»), as the basic guiding document;

To systematize and consolidate regulations and requirements in the sphere of employment of highly qualified foreign specialists, or to develop a guiding act that is similar to the EU Blue Card Directive. In parallel, to provide access to legislation via a specific resource on the Internet, including in a foreign language;

To adjust the criteria for the status of "highly qualified specialist" by shifting the focus from the financial component in favor of interim measures and needs, or to differentiate the flow of highly skilled professionals in a number of categories taking into account the interests of business and the regions in need (may be combined with the annually published list of labor requirements);

To review the limitations established in the legislation of the Russian Federation for the employment of highly qualified foreign specialists who are employees of retail trade organizations;

To develop guarantees for family members of highly qualified specialists;

To draw attention to the obligatory personal receipt of a work permit by a foreign employee in the migration authorities;

To replace the need to inform the executive authority in the migration sphere about the performance of the obligations of the employer on a quarterly basis by

the possibility of referral of the employee to the competent authorities in case of violation of obligations;

To create a single accredited mediation centre for employment and support of highly qualified foreign specialists by analogy with the Blue Card International Employment Center;

To solve the problem of information support by conducting research aimed at a comprehensive determination of the staffing level of sectoral and regional labor resources (budget of labor);

To create the infrastructure necessary to ensure adaptation and integration of immigrants into Russian society, and effective legal and administrative mechanisms (work integration, housing, cultural adaptation and integration, etc.);

To introduce an analogue of Europass to integrate Russian citizens to the European system and to enhance the internal mobility of labor resources;

To strengthen the bond between the labour market and education.

As Russia is a part of the global world, the outflow of skilled resources is to some extent inevitable. The aim of the legislator is to transform possible intellectual emigration in the field of intellectual exchange. The win-win strategy instead of zero-sum game with the countries-importers of the Russian intellectual resources is possible if a significant proportion of migrants return to Russia after work (study) abroad. It will be a transfer not only of individual skills and education, but also of innovative solutions and technologies. Recognizing the experience of the European Union in changing legislation and improving the system of employment of skilled workers in Russia will help the Russian Federation to compete in the international market of skilled labor forces.

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INTRODUCTION: subject, methodology and objectives

Nowadays the reality of geopolitics demonstrates that in many parts of the world, including the European Union, a new type of society is being formed. There is a strong tendency of natural population decrease. Reduction of the population, especially of the number of working age people, has brought certain negative consequences to the European society.

A number of scientists claim that only the reception of migrants from other countries would help to avoid a potential demographic crisis.

At the same time, serious concerns about the negative consequences of immigrants' arrivals are being expressed by many prominent people. There are attempts to play on the common irritation of ordinary people due to the clash of cultural and mental distinctions of immigrants and natives.

In order to be objective, it should be mentioned that there are some positive consequences of this reception of immigrants for the EU: in terms of demography, economy etc. Among probable drawbacks are: higher levels of crime, more terrorist threats, more ethnic conflicts, the probability of a social dissociation as a result of immigrants' presence.

Perhaps in this situation it is necessary to assess the problem realistically and on the basis of this, to develop a clear immigration policy, including the integration of migrants into the European society guidelines.

In fact the methods hereby used are that of analysis for the EU migration policy and that of comparison for the case of Russia's migration policy.

The theory of realism was also used in the last part of the thesis in its application to the case of Russia.

The comparative legal method was extensively used in this thesis. By its virtue it becomes possible to analyze certain aspects of the immigration system in the different periods. Similarly the systematic method and the method of analysis were used to consider the various historical facts, events and documents.

Content analysis has been used as an empirical scientific method to draw conclusions on different kinds of communication such as interviews, observation protocols or articles ect².

The relevance of the chosen subject is confirmed by the following:

The European Union faces new challenges arising from the general globalization and increased collaboration between the states. One of these challenges is the intensification of migratory movements. Efficiency of immigration policy of the European Union significantly influences the processes of all-European society consolidation. When immigrants make substantial part of the population, their involvement into society becomes crucial.

The goal of this thesis is to analyze the necessity of the development of the unified mechanism of immigration regulation in the EU and determination of the extent to which creation of such a mechanism, complying with the existing demographic, social and political situation, is possible.

In order to achieve the aforementioned goal, the following objectives were accomplished in the thesis:

- Key trends of the EU immigration policy were explored;
- A comprehensive review of immigration policy in the EU at the national, interstate and supranational levels as well as its regulatory and institutional support was conducted;
- The "Integration" category will be investigated in the context of the EU immigration policy in relation to immigrants included in the process of adapting to the political system and the political culture of the recipient country;
- Immigration policy at the national and supranational level was analyzed
- Consideration of the European Union labour market in terms of immigration policy

² Krippendorff, K. (2004). Content analysis: an introduction to its methodology. Thousand Oaks, CA: Sage Publications.

–The interaction between the EU and Russia regarding immigration regulation and also the possibility of applying the experiences of the EU Member States to Russia was thoroughly analyzed.

The empirical basis of the current thesis includes statistical reports, the EU founding treaties, protocols and declarations attached thereto, the legal acts of the EU institutions, international agreements and conventions between the Member States relating to the chosen subject, legislation of the Member States as well as laws and regulations of the Russian Federation.

Works of the following authors specializing in issues related to the EU immigration policy were reviewed and used for the purposes of this thesis: Brubaker R., Carrera S., Gromovs J., Varvitsiotis I., Walker N., Monar J., Den Boer M., Feldman G., Potemkina O., Egorova E. etc.

The significance of the current thesis can be confirmed by the following factors:

- there is an interpretation of the concept of "integration" as a process of the inclusion of migrants from third (non-EU) countries into the recipient community;
- the author of the thesis analyzed the political status of immigrants in the host countries and the EU regulatory mechanisms of obtaining the citizenship;
- experience of using regulations of EU Labour Market as a part of the state migration policy at national and European supranational level was studied;
- there is an attempt to determine the priorities for the EU in the context of immigration issues, as well as to define the key trends of the European Union development in terms of immigration regulation.

The structure of the dissertation research: the thesis consists of an introduction, four chapters, conclusion, bibliography and appendices.

Chapter I. The immigration policy of European Union as a part of the Area of Freedom, Security and Justice (AFSJ)

§ 1. Evolution of the immigration policy from Maastricht Treaty to Lisbon Treaty

The EU immigration policy is a part of the Area of Freedom, Security and Justice that was established in 1998 by the Amsterdam Treaty. This created a legal and political framework for further development and the EU immigration policy formation in particular. For a long time, the process of immigration policy evolution was held back by various obstacles often related to the reluctance of finding common approaches and regulation for all the EU Member States. This was mainly because on many issues, including immigration policy, each Member State preferred to keep control at the level of particular state.

The European solidarity is much more complicated than is reported by numerous documents of the European Commission. Being the heart of the European integration, the European Commission has been forced to postpone many prospective initiatives due to concerns expressed by some Member States. The persistence of the European Commission should not be underestimated; it never stops promoting its initiatives and at some point, when they consider society is ready, these ideas are brought back for discussion.

The existing approach to EU immigration policy regulation was formed gradually and in order to understand it clearly it is vital to review the milestones of its development.

For the first time, legal consolidation of cooperation on immigration issues can be found in the Treaty on European Union, which was signed on 7th of February 1992 (The Maastricht Treaty). Up to this point, cooperation on this topic was inconsistent.

The review of immigration policy was guided by the necessity of creating a common economic market in the EU, which demanded (1) common rules to regulate immigration flows, (2) determination of the basis of temporary and permanent residence of immigrants in the EU and by the adoption of the Schengen

Agreement³. At the same time, it contradicted the aspirations of the authorities of the EU Member States. Governments of the European Union Member States sought to take control of the immigration flows. They were concerned that obligations to adopt immigrants would lead to additional expenses.

The Maastricht Treaty referred immigration policy to a purview of the Third Pillar - Justice and Home Affairs (JHA).⁴ However the tools of the Third Pillar did not comply fully with existing difficulties of the immigration policy. Common positions were not legally binding; the framework decisions did not have a direct effect. Unanimous opinion was the only method of decision-making in the area of Justice and Home Affairs, which complicated significantly the efficiency of the measures in the area of EU immigration policy. The idea of an attribution of the area of Justice and Home Affairs to the EU joint competence was not supported at that time.

However, the main achievement of the Maastricht Treaty was an agreement on mandatory discourse between the governments of the EU Member States on the issues of immigration regulation. Ministers of the EU Member States were obliged to meet every six months within the framework of the EU Council activities.

Further development of the aforementioned topic is connected with the Dublin Convention of the EU Member States (15 June 1990), which reflected the process of asylum applications handling. In February 2003, that document was transformed into the Dublin Regulation.⁵

After that relevant competence for immigration issues kept being discussed regularly. Interest in this topic was reflected in the Amsterdam Treaty of January

³ The Schengen acquis - Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. Official Journal L 239 , 22/09/2000 P. 0013 - 0018

⁴ http://www.europarl.europa.eu/igc1996/fiches/fiche9_en.htm (date: 06.09.2015)

⁵ Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national of 18 February 2003, Official Journal L 50/1, 25.02.2003.

1, 2005. One of the key achievements of the Amsterdam Treaty is the introduction of a principle of qualified majority (supermajority) in the EU Council on some issues of immigration policy, excluding the legal immigration issues that were to be voted unanimously. The co-decision procedure had a wide application. The Council of the EU elaborating the key regulations and the European Commission as the main "supplier" of legislative initiatives.⁶

The key drawback of the Treaty of Amsterdam was that closely entwined aspects of immigration policy regulation were dispersed among the different parts of the Three Pillars framework. It complicated the co-operation of Member States sustainably. Different matters of the immigration policy (visa policy, border crossing, illegal immigration etc.) turned out to be covered by overlapping regulations. E.g. human traffic as a part of the problem of illegal immigration fell under the regulations of the third pillar (the sphere of criminal legal co-operation). In terms of law it was especially complicated since there were two, sometimes contradicting EU Treaties related to the regulation of immigration policy: the Treaty on the European Union and the Treaty establishing the European Community, which led to significant confusion.⁷

Therefore, various aspects of the immigration policy evolved unevenly. Issues under the first pillar (such as visa policy, border control and asylum) grew quite dynamically. The part of immigration policy falling under the rules of the third pillar (issues of police cooperation, legal immigration) developed extremely slowly. Nevertheless the first Action Plan for the implementation of the Amsterdam Treaty was made on the basis of Tampere summit provisions (Finland, 1999)⁸. This program laid the basic principles of further EU policies, including the immigration one that can be traced to later programs (Hague⁹ and

⁶ http://ec.europa.eu/codecision/index_en.htm (date:24.07.2012)

⁷ Official Journal of the European Communities, C 325/33, 24.12.2002. http://eurlex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf (date:21.03.2014)

⁸ European Council, Presidency Conclusions of the Tampere European Council of 15-16 October 1999, Brussels // www.eur-lex.europa.eu

⁹ European Council. The Hague Programme: Strengthening Freedom, Security and Justice in the European Union // Official Journal of the European Union C 2005/C 53/01

Stockholm¹⁰) with some variations. The EU program of granting political asylum and immigration policy were the first issue on that actions plan, which confirms that from the very beginning, there was an ambitious goal of the creation of a unified system. As a result of the Council meeting in Tampere, the EU began to develop a common immigration policy in the following areas:

- Legal migration and integration of third (non-EU) country nationals;
- Combating illegal immigration;
- European common asylum system;
- Cooperation with countries of immigrants' origin and transit.

In June 2004, the European Commission published a final evaluation of the Tampere programme, proclaiming that in most areas of cooperation in the field of domestic affairs, significant progress was made. However, due to the prevalence of the inter-state approach to decision-making in this area, it was not always possible to reach agreements between the Member States regarding the issues relating to the sphere of national sovereignty.

In November 2004, The Hague Programme was published. Among other things, it covered common asylum and immigration policies. In this context, it is necessary to refine the terminology. Researchers declare that the establishment of any EU common policy is the division of spheres of competence at the national and sub-national levels, where the principle of subsidiarity works as well. Common policy, in turn, implies a high degree of harmonization, and sometimes unification of the laws of the Member States.

At the same time, the issues of legal immigration, quotas for entry of immigrants, as well as issues of integration should be regulated by the national law of every Member State. The role of supranational structures was reduced to establish a "common framework" and instruments of "soft law". Agreements with

¹⁰ The Stockholm Programme – An open and secure Europe serving and protecting the citizens. Council of the European Union // Official Journal of the European Union 2010/C 115/01

third (non-EU) countries (key suppliers of immigrants) were crucial, so various issues of cooperation were considered by the program, such as the readmission, organization of centers and mobility partnership programs. The mobility partnership program¹¹ was a new initiative of the EU, which implied cooperation with third (non-EU) countries, where was the biggest influx of immigrants towards the European Union. The issues such as assistance to the countries which immigrants came from to eliminate poverty and to develop those countries; the facilitation of a visa regime, the creation of temporary migration schemes and the combat of illegal immigration. The Hague program included the repatriation and development of the biometric information system.

In 2006, at the European Union summit, the idea of common immigration regulation was confirmed. The EU Council approved the report of the European Commission about the establishment of a comprehensive European migration policy and adopted the Action Plan. The European Commission allocated more than 5 billion euros to finance migration issues related to work in the period 2007-2013.¹²

On December 1 2009, the Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community came into force (signed in Lisbon, 13 December 2007).¹³ This document was not of *as much* revolutionary significance for immigration policy, as it was for the area of police and judicial cooperation on criminal matters where some radical changes took place. It was mainly because most of the provisions had been considered already by the Amsterdam Treaty and formally had been active for 10 years.

¹¹ Agnieszka Weinar. Mobility Partnerships – what impact do they have on legal migration and mobility? <http://www.migrationpolicycentre.eu/mobility-partnerships-what-impact-do-they-have-on-legal-migration-and-mobility/> (date: 13.03.2015)

¹² Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union, <http://www.consilium.europa.eu/uedocs/cmsUpload/web097781.en.pdf> (date:01.02.2017)

¹³ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007

Nevertheless, the Lisbon Treaty facilitated the general harmonization of the areas of freedom, security and justice development. The Stockholm Programme¹⁴ of 2009 announced a very ambitious agenda, where among other things, establishment of the Immigration Code as a regulator of the EU common immigration policy was mentioned. Before that, there was just a general idea of the immigration regulation guidelines establishment.

The main achievement of the Lisbon Treaty was the transition from the minimum standards stated in the Amsterdam Treaty to the common system of immigration issues regulation. This goal became part of the European Constitution draft. While waiting for the adoption of the Constitution, The Hague Programme 2004 announced the plans for the common European immigration policy. But after the failure of the Constitution project, the Programme provisions on the immigration policy also went on hold. Few of the planned measures were fulfilled, while most of them were incorporated into the Stockholm Programme, which was also quite tricky, since that Programme was launched before the Lisbon Treaty actually became active.

When the Lisbon Treaty was adopted, the establishment of a common immigration policy came closer to being a reality. Division of immigration policy aspects between the Pillars was eliminated and the system of different issues being regulated by different, sometimes contradictory procedures and legal acts came to an end. Areas of freedom, security and justice, including immigration policy, from that moment on were to be built on common principles and became a joint competence of the EU Member States.

The Lisbon Treaty substituted the unanimous decision making process with a vote by a qualified majority on the matters of legal immigration channel formation, integration arrivals and appropriate legal framework, erasing the last outpost of the exclusively sovereign regulations of immigration issues. The Lisbon Treaty set construction of a common asylum policy as a priority goal for

¹⁴ The Stockholm Programme – An open and secure Europe serving and protecting citizens. Council Of the European Union (2010/C 115/01), Brussels, 2 December 2009

the first time. The status of political asylum and temporary protection was also scheduled to be unified (Article 78 of the Treaty on the Functioning of the European Union in edition the Treaty of Lisbon). However, the question still remained as to whether the Lisbon Treaty had every chance of forming a fully-fledged common immigration policy.

Some scientists answer this question negatively because the Member States in the EU have a right to define the quota for legal migrants, methods for their integration into the society and still can make their own decisions on quite a lot of issues, despite the practice of the qualified majority during key decision-making processes. The conclusion can be made that despite the declaration of the common immigration and asylum policy establishment, in practice, a common policy can not be built so easily.¹⁵

At the same time, there is a more optimistic point of view on this matter. It is based on establishing a *common* policy, not a *single* one. The differences between these terms were noted earlier. It's possible to consider the immigration policy as a sphere which could be managed on two levels: national and supranational. It means the issues of labour migration, the integration of immigrants etc. would be included into a common policy, but issues of asylum, the implementation of the protection of external borders etc would be included into a single policy for all the EU Member States.

Here is an example. Thus an idea of the international rather than national level of the European border guard¹⁶ (protection of the territorial borders of the EU) was considered utopian, now it's being discussed again as potentially possible (after some alterations).

It is interesting to note that alongside the Lisbon Treaty, one more document related to the matter was adopted - the European Pact on Immigration

¹⁵ N. Walker (ed.). Europe's Area of Freedom, Security and Justice, Oxford: Oxford University Press, 2004.

¹⁶ Official site of The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union - <http://www.frontex.europa.eu/operations/european-border-guard-teams> (date: 01.12.2015)

and Asylum.¹⁷ Creation of that document was initiated by France and related to the general line of the President Nicolas Sarkozy on resolution of the EU immigration issues¹⁸. The immigration theme was the subject of concern to the President of France even during his work as the Minister of Home Affairs.

The European Pact on Immigration and Asylum and Stockholm Programme were implemented simultaneously. According to each document, two Action Plans were approbated. The European Pact on Immigration did not contain legally binding statutes. At the same time, it expressed the holistic view on the problem, covering five key directions.

The *First direction* is a protection of the borders of the European Union. On one hand, the Member States are responsible for their part of the EU common border area. It has already planned to strengthen border security and to create a complex system of personal biometrics data for visas.

On the other hand, a large role is given to a supranational agency – FRONTEX.¹⁹ There are central headquarters of the organization but also two permanent command centres - on the southern and eastern borders of the EU. This organization provides assistance to the countries most affected by illegal immigrants. The Agency is essential as a tool to solve the problem of illegal immigration. FRONTEX is the European border agency that has been operating since 2005. Despite common perceptions, FRONTEX is not an actual border police, with a staff in uniform and with the task of patrolling the borders of the EU.

Rather, FRONTEX is a coordinating mechanism of the European Union, organizing the cooperation of the border police bodies of the EU Member States. In this respect, FRONTEX is like a meta border police: it is both above and behind the everyday practices of border guards. FRONTEX combines a lot of tasks and

¹⁷ Council of the European Union 13440/08. European Pact on Immigration and asylum. Brussels, 24 September 2008// www.eur-lex.europa.eu

¹⁸ <http://www.bbc.co.uk/news/world-europe-17280647> (date:12.03.2012)

¹⁹ European Agency for the Management of Operational Cooperation at the External Borders of the Member States www.frontex.europa.eu

activities into one body, most of whose functions would be regarded separately. There is an intelligence service component: FRONTEX is actively monitoring and pooling data about all the incidents at the external borders of the EU, so that more precise predictions of migratory movements can be made.

The *Second direction* is the organization of the legal migrants' reception, especially in terms of the "Blue Card" program. For that, existing German experience was adopted.

The *Third direction* is to prevent the influx of unskilled labour into the EU created by illegal immigrants. This issue was settled by the Directive 2008/115/EC of the European Parliament and of the Council (16 December 2008) on common standards and procedures in Member States for returning illegally staying third (non-EU) country nationals.²⁰ The task of the Directive was to establish common EU rules and procedures to return the illegal immigrants, to ban re-entry, and to set the total detention period in case of violation.

The initial decision falls within the jurisdiction of each Member State: whether to deport immigrants or legitimize their presence on the territory of the country. The mechanism described in the Directive is adjusted to each Member State and comes into force only after the decision to deport an immigrant is made.

It is also suggested in the Pact that Member States make readmission agreements at EU level as well as bilateral agreements with countries they might be most concerned about in terms of potentially necessary illegal immigrants' extraditions.

The *Fourth direction* is a construction of the Common European Asylum System (CEAS). Pact provides for the creation of the European Asylum Support Office for the exchange of information between Member States on asylum issues.²¹ The European Commission set a task to create a single

²⁰ Official Journal of the European Union L 348, 24.12.2008, p. 98

²¹ Proposal for a Regulation Of The European Parliament And Of The Council establishing a European Asylum Support Office, Brussels, 18.2.2009, COM(2009) 66 final

mechanism for asylum provision for all Member States as well as the introduction of unified refugee status and the procedure of its assignment.

The *Fifth direction* is to help migrant-exporting countries. The idea is to provide the opportunities for the citizens for legal migration via education and work, to support the voluntary return of people to their homeland, to create mechanisms of earnings investment into the home countries of the immigrants etc.

At the heart of the European Pact on Immigration was laid intergovernmental approach for cooperation on immigration issues. While the Stockholm programme paid more attention to the protection of immigrants' rights and the solidarity of the EU policies. The Pact's provisions were designed as a reaction to existing problems in the area. According to the statistics, there were about 5% of skilled immigrants in the EU from the total number of immigrants, which was completely in contrast to the situation in the United States of America.

In order to change the situation, the EU Pact established the principle of facilitating the influx of highly qualified professionals and banning the entry of low-skilled workers. The existence of two documents underlined the conflict between supranational and intergovernmental interests and therefore different approaches to the immigration policy. The first approach had its focus on human and civil rights protection in relation to the status of immigrant and the second approach did not pay as much attention to immigrants themselves.

The Stockholm Programme, adopted in 2009, operated from 2010 to 2014. Unlike previous programs this one does not cover topics separately. Issues of particular policies (including immigration ones) can be found in all the sections. E.g. according to the section "Promoting citizens' rights: a Europe of rights" in case of absence of authority of the EU Member State in particular, a citizen of a third (non-EU) country has the right to apply to any other representative of an EU

state on the territory of this third (non-EU) country. The section “A Europe that protects”²² covers the biggest amount of immigration issues.

The Stockholm Programme, focused on the enhancement of the integrated border management, calling for further improvement of FRONTEX resources, capabilities and mandates (European Council 2010:26).

In November 2011, the European Commission adopted the ‘Global Approach to Migration and Mobility’ (GAMM),²³ a strategy built around four pillars: organization and facilitation of legal migration and mobility; prevention and reduction of illegal migration and trafficking in human beings; promotion of international protection and enhancement of the external dimension of asylum; maximization of the developmental impact of migration and mobility. According to the Commission, the GAMM is designed to be migrant-centered.²⁴

Moreover, the respect for migrants’ human rights is a cross-cutting issue underpinning the four pillars (European Council 2011).

Summing up, it is worth saying that the European Union has developed a two-faceted migration policy. On one hand, the EU strengthened its own capabilities to control its external borders. On the other hand, it pursued the externalization of migration management, establishing partnerships aimed at improving third (non-EU) countries’ capabilities to effectively cope with migration flows.²⁵

"Europe of Solidarity" assumes forming policy with consideration of the immigrants’ reception the way it is now in Member States on the southern borders of the European Union.

²² The Stockholm Programme — An open and secure Europe serving and protecting citizens //Official Journal C 115 , 04/05/2010 P. 0001 - 0038

²³ The GAMM is a renewal of the 2005 Global Approach to Migration (GAM), which was based on three dimensions: the organisation of legal migration; the link between development and migration; the prevention and combat of illegal immigration; see European Council, 2005. The GAMM “[...]should be [...] the overarching framework of EU external migration policy [...]” see European Commission (2011:4)

²⁴ “All action must be empowered to gain access to safe mobility” (European Commission 2011:7).

²⁵ Migration, Human Rights and Security in Europe MRU Student Conference Proceedings, 2012, Edited by Siril Berglund, Helen McCarthy and Agata Patyna

In fact, the EU Southern countries have to deal the most with the negative consequences of the EU legislation on asylum. The Member State whose territory an immigrant entered is responsible for assigning its legal status and support for the asylum procedure and so on.

The program set a pioneering task to create a single legislative instrument (the Code of Immigration). In this case, a positive experience for the codification was perceived of the provisions of the Schengen and visa legislation.

In spring 2010, the Action Plan Implementing the Stockholm Programme was adopted. And the following actions were taken:

- Publication of the Manual on Integration for policy-makers and practitioners (third edition)²⁶
- Publication of the Manual on direct help to human trafficking victims
- Continuation of the negotiations about readmission agreements with third (non-EU) countries
- Adoption of the Immigration Code: codification of legislation
- Negotiations about a cancelation of the visa regime for Balkan countries

It is necessary to focus on the innovations introduced by the Lisbon Treaty. Immigration policy was referred by the Lisbon Treaty to the sphere of joined competence. Exclusive competence means all the functions are transferred to the supranational level, while joint competence implies the right to set regulations by the Member States, though they cannot go beyond certain acts of the EU in their law-making processes. The Treaty of Lisbon helped to change the vector of the EU immigration policy. The third pillar was abolished and division of matters of justice and home affairs between the first and third pillars got cancelled. The authority to regulate that sector was fully transferred to the jurisdiction of the EU institutions. That was expected to bring in some positive changes for the

²⁶ This Handbook was written by Jan Niessen and Thomas Huddleston of MPG on behalf of the European Commission (Directorate General for Justice, Freedom and Security) / European Communities, 2009

development of the whole area of freedom, security and justice, including the immigration policy.

Therefore, the development of immigration regulation in the period from the Maastricht to the Lisbon Treaty, indicates a phased transition of governance of immigration processes from exclusively national to the supranational level.

Thus, with regards to the Stockholm programme 2010-2014, according to the Ministers, it laid the foundations of the regulatory framework for the building space; it is time to improve the quality of legislation and its consistent implementation. As for the external areas, the proposed focus on dialogue and global partnership with third (non-EU) countries based on the principle of "positive conditionality": a cooperation agreement should include a commitment to discourage irregular migration. The Ministers called the next priorities of their future activities: the border management and the return of migrants to their homeland; the convergence of practices of Member States on strengthening the common European regime of asylum; burden-sharing of asylum seekers among all the EU countries.

However, on the eve of the June summit 2014, the events that occurred 5 years previously, repeated themselves, when the summit in Stockholm was granted two programs by the Commission and by the Council. It is to be recalled that from 2009 to 2014, the EU did not have a common plan concerning the internal affairs and justice. Instead of this there are the various strategies, 'roadmaps', Action Plans on a broad range of areas.

At the summit in June 2014, the heads of state and governments of the EU tried to change the trend. The summit approved the "new strategic framework" for the space of freedom, security and justice for 2014-2020 in accordance with the regular budget cycle²⁷. Unlike previous programs, the new document did not receive geographic location. It was unofficially named the "Ypres Guidelines"²⁸

²⁷ European Council. 26-27 June 2014 "Strategic Agenda for the Union in Times of Change". P. 6.

²⁸ The Missed Opportunity of the "Ypres Guidelines" of the European Council Regarding Immigration and Asylum, July 29, 2014, Philippe De Bruycker

after the summit's location – the Belgian city Ypres, which was selected for the summit in memory of the victims of the First World War. The "Ypres Guidelines" replaced the "Tampere programme" (1999), the Hague (2004) and Stockholm (2009) programmes, through which the European Council laid down the principles and main directions of development of areas of Freedom, Security and Justice.

The "Ypres Guidelines" are designed to organize the norms stated in other programmes and strategies. The heads of state and government will be able to assess its implementation in 2017. In accordance with a given line is supposed to focus on the timely transposition of the EU Directives in the national legislation of the Member States, as well as to improve the use of existing tools of the EU immigration policies.

The debate that preceded the approval of new guidelines for the management of the Area of Freedom, Security and Justice, including immigration policy, took place in a rather tense atmosphere. Many participants believed that in a modern situation, there is no need for the new program, since the space has already acquired a clear form and structure, filled with the necessary content. There have been a multitude of legal and political instruments targeting its improvement and development. Therefore, despite repeated statements about the "newness" of the proposed measures, the Conclusions of the summit did not contain new ideas, but only confirmed the traditional directions of development of an Area of Freedom, Security and Justice: the necessity of performance of previous programs, for example, the legislative package on asylum; strengthening of combating illegal immigration and cooperation with third (non-EU) countries. The summit suggested returning to the Proposal for a Regulation on the European Border, gradually expanding the powers of the European agency FRONTEX. The heads of state and government agreed to strengthen counter-trafficking, to develop a regional support program for the resettlement of Syrian refugees in the neighboring countries of Syria outside the EU, as well as in much more obscure wording called on Member States to host the Syrians. In addition, the Conclusions

stressed the need to strengthen the role of EU Coordinator for the fight against terrorism, especially in connection with the participation of the EU citizens in the military action in Syria²⁹.

The habitat measures of the "new principles" immediately drew criticism in the expert community. The heads of state and government were accused of "narrow understanding" of the meaning of the functioning of the European Asylum Support Office (EASO)³⁰: to give it a major role in the regulation of the harmonization of the legislations of Member States on asylum and to ensure asylum seekers the "same procedural guarantees and protection throughout the European Union." This intention requires amendments to the legislative package on asylum and EASO that are contrary to the general regulations of the "Ypres Guidelines" (not to accept new legislation). Earlier, the possibility to expand the Office's function was discussed: coordinate the mutual recognition not only of negative, but also positive solutions for asylum of Member States. However, it was indefinitely pushed back, which once again demonstrates the growing distrust between Member States. "New principles" relating to visas, take into account the latest changes in the EU visa policy towards its pragmatism and economic considerations. The need to modernize the procedure for issuing visas is much stronger in order to bring to the EU probably more tourists. "New principles" propose to strengthen the cooperation between Schengen States but do not include the ambitious task of institutional transformation of the visa policy, namely, the establishment of a common visa application centre where people could obtain a Schengen visa.

Some of the suggestions included in the document have been waiting their turn: the joint consideration of applications for asylum, the Schengen visa application centers. Other provisions restore old initiatives of the European Commission. For example, codified legislation on labour migration the European

²⁹ European Council Conclusions. 26-27 June 2014. P. 2-7.

³⁰ The EU 2004 Hague Programme proposed the establishment of the European Asylum Support Office. The Office was conceived to play a crucial role in ensuring practical cooperation between Member States on matters related to asylum. www.easo.europa.eu

Commission has already developed in 2001³¹. As a whole, "Ypres Guidelines" are the result of a consensus of the heads of state and government of the EU.

For the most part, they are much less ambitious than the Commission's proposals, published earlier, in March of 2014³². The suggestions and traditional appeals to solidarity and a fair distribution of refugees in the Member States are not proofed. The Commission and the Council have a different understanding of methods to achieve this priority objective, which could exacerbate the traditional opposition of the Commission and the Council, composed of the Ministers of Internal Affairs and Ministers of Justice, in many points of the dossier³³.

At the first informal meeting under the chairmanship of Italy (Milan, July 8-9, 2014), the Ministers of Internal Affairs and Ministers of Justice agreed that the Italian authorities need help in the reception of migrants. For the 8 months in 2014, 73 thousand arrived in the country.

At the same time, no one expressed a desire to respond to the proposal to allocate the responsibility for receiving asylum seekers. So, Ministers at first did not want to pass the cost of the operation "Mare Nostrum", at the Italian coast, on to the EU agency FRONTEX, which has become too heavy a burden for the country (the cost of sea patrols were 9-11 million euros per month).

However, already in September 2014, the Ministers of Internal Affairs of France, B. Cazeneuve³⁴ during the meeting with the member of the Commission, C. Malmström announced the readiness of France to participate in the operation FRONTEX+, which will replace the Italian "Mare Nostrum". The operation,

³¹ Peers S. The next multi-year EU Justice and Home Affairs programme. Views of the Commission and the Member States. 12 March 2014. <http://www.statewatch.org/analyses/no-238-new-jha-programme.pdf>.

³² In its communication, the Commission proposed to create a platform for the exchange of views among countries about the situation in the labour markets - "single migration space", based on mutual recognition of decisions, as well as single Schengen visa application centre. "An open and secure Europe: make it happen".

³³ De Bruycker Ph. The Missed Opportunity of the «Ypres Guidelines» of the European Council Regarding Immigration and Asylum. European University Institute, Florence. July 29, 2014. <http://blogs.eui.eu/migrationpolicycentre/themissed-opportunity-of-the-ypres-guidelines-of-the-european-council-regardingimmigration-and-asylum>.

³⁴ Bernard Cazeneuve is a French Socialist politician who has been Prime Minister of France since December 2016. In 2012, he was appointed Minister of State for European Affairs.

codenamed "Triton" began on November 1, 2014. FRONTEX led large-scale patrols off the coast of Libya, coordinating two operations – Hermes and Aeneas. The Commission increased FRONTEX's budget, which in 2014 amounted to 90 million Euros, in 2016 to 176 million Euros.³⁵

In July 2014, EASO published statistics on asylum in the EU. In accordance with the report, in 2013, the majority of applicants were from Syria (by 109% more than in 2012, in Russia (by 71% more) and in six Western Balkan countries (by 36% more). Overall, in 2013, 435,76 thousand people applied for asylum, which is 30% more compared to 2012. Italy, along with Germany, France, Sweden and the UK were in the top five countries who are forced to take the maximum number of applicants. This group will soon be joined by Poland. On average, applications for asylum were successful in 34.4% of cases; the refugee status, complementary and humanitarian protection were granted, mostly to immigrants from Syria and Eritrea. As for the residents of the Balkan countries, almost all their motions are rejected, that pushes Cecilia Malmström³⁶ to the idea that inspired the 2013 amendment to the rules of the abolition of Schengen visas for the citizens of those countries if they provide false motivation in their applications³⁷.

At the same time, the Commission noted the progress made by Kosovo towards meeting the requirements for the lifting of Schengen visas: the readmission process operates efficiently, there were introduced reforms of border security, migratory flows and asylum applications. The Commission's assessment is somewhat contrary to the report of EASO, fixing a significant increase in the trafficking and smuggling from Kosovo, as well as an increase in the number of asylum seekers in the EU.

³⁵ <https://euobserver.com/justice/130334> (date:07.07.2014)

³⁶ Anna Cecilia Malmström is a Swedish and European politician who has served as European Commissioner for Trade since 2014, having previously served as European Commissioner for Home Affairs from 2010 to 2014.

³⁷ European Asylum Support Office. Annual Report. Situation of Asylum in the European Union 2013. EASO 2014. P. 7.

In July 2014, the government of Bulgaria announced the completion of the barbed wire fence on the border with Turkey, with a length of 30 meters and a height of 3 meters. Construction began in November 2013 after authorities said that they are no longer able to cope with the influx of immigrants, mostly from Syria. The official reason for the fence's construction is to prevent immigrants from entering the EU, but only to guide them to the points of border crossings. *Amnesty international*³⁸ did not believe the explanation and condemned the immigration policies of the EU, saying the EU spends more money on fences and strengthening borders than on the reception and assistance to refugees. According to ¹ *Amnesty International*, for the years 2007-2013, 4 billion euros were allocated from European funds for border protection and only 700 million euros were spent on improving the situation of refugees and asylum-seekers.

Statistics, as well as non-trivial methods to counter the influx of immigrants such as a fence with barbed wire on the border attest to the dire immigration situation in the European Union. A priority of the EU institutions, as well as undoubted achievements in this area are still not bringing visible results. What explains the lack of effectiveness of the EU immigration policy?

It seems that the negative role played by several factors.

The economic factor. The global economic crisis that began in 2008, although did not affect significantly the contents of the Stockholm Programme, but, nevertheless, prevented the implementation of many of its items. Policies and practices of both national and European levels had to be lifted to overcome the consequences of the economic and social upheaval, exacerbated by the Euro zone crisis and the relentless growth of unemployment and underemployment. In the countries most affected by the financial crisis – Greece and Spain, the unemployment rate exceeded the average for the EU. Unemployment among

³⁸ Amnesty International is a non-governmental organisation focused on human rights with over 7 million members and supporters around the world. The stated objective of the organisation is "to conduct research and generate action to prevent and end grave abuses of human rights, and to demand justice for those whose rights have been violated / www.amnesty.org

immigrants has tripled – from 8.8% in 2007 to 26.6% in 2012, the same citizens of third (non-EU) countries with low and medium professional qualifications that arrived recently were the most vulnerable.

It is clear that politicians find it difficult, and almost impossible to explain to the skeptical populations of their own countries the need to reduce unemployment and simultaneously to attract new economic migrants. It is not surprising that the Member States half-heartedly fulfilled their obligations for the implementation of legislative norms of the EU in this field.

Moreover, the EU governments have lost their former financial capability to implement the EU large-scale initiatives. Almost all of them, Ireland and Greece and also other countries in the southern part of the EU, came under pressure from the spending cuts and simultaneous commitments at supranational level. The impact of the crisis has already affected the design of programmes of immigrants' integration, particularly in Spain and the Netherlands, which have reduced their costs in the last five years.

The crisis factor has reduced the willingness of the Member States to support new legislative initiatives of the Commission, which, they suspected, will result in substantial costs for the implementation of the directives, adaptation of existing systems to the newly installed rules. The costs of some ambitious projects of the past five years, for example, the establishment of the Schengen information system of second generation, are much higher than initially planned, both at national and supranational levels³⁹.

Another package of proposals is under discussion – development of a control system of entry and exit, a registration program of frequently travelling citizens. It is subjected to scrutiny under the pretext that the budgets laid down for their implementation are too small⁴⁰.

³⁹ European Asylum Support Office. Annual Report. Situation of Asylum in the European Union 2013. EASO 2014. P. 7.

⁴⁰ In the report dated 19.05.2014 the European court of auditors criticized the Commission for ineffective management of the Schengen Information System (SIS-2). The court considers that though the fault of the Commission SIS-2 began its work on six years later than planned,

The political factor. Another factor, which has not supported increasing the efficiency of the EU immigration policy, was the new role of populist parties and movements in many Member States. More and more voters across Europe believe that their governments have lost control over immigration, cannot properly regulate the influx of immigrants and their integration. Populist parties, from the Netherlands to Greece, scored political points on such sentiments and put pressure on governments so that they recognize their legitimate demands. At the EU level, the growing influence of right-wing parties also cools the enthusiasm of the Ministers of Internal Affairs, who are forced to negotiate in the Council, based on immigration debates occurring in their respective countries.

The EU position in these debates is complicated by the rise of *Euroscepticism*. As a result, many national governments at the negotiating table have moved from their former positions of European cooperation, which naturally complicates the formation of the European immigration policy, as well, and some others. So, the British government requires changes to the balance of competencies of the EU Member States, and in the Netherlands, they published "the subsidiarity review" – a listing of some areas where the national government should play a leading role. Migration was a defining issue in the UK's June 2016 referendum on EU membership. Brexit became an answer for the disagreement with EU migration policy as well.⁴¹

Consolation for the Commission is the fact that, unlike Britain, the Dutch government recognizes the importance of the EU role in immigration policy and asylum. Hence, with further policy planning of internal affairs and justice, Commission will not only have to set realistic goals, but also take into account the economic situation in the EU, as well as to draw attention to the concern of its citizens. The elections to the European Parliament in May 2014 were marked by the success of the parties of eurosceptics and extreme right-wing movements,

while the budget of the system has exceeded the original almost eight times (167 million euros against 23 million).

⁴¹ The Migration Observatory, COMPAS (Centre on Migration, Policy and Society), University of Oxford, <http://www.migrationobservatory.ox.ac.uk/>

revealing the presence of a combustible mixture of skepticism in society toward Brussels, dissatisfaction with the results of the activities of the traditional political parties and the fear of an influx of immigrants. This will determine the next stage of development of the immigration policy of the European Union.

The geopolitical factor. Finally, the impact of geopolitical factors has prevented the EU from effectively implementing the provisions of the Stockholm Programme. The influx of illegal immigrants, along with those who could really qualify for refugee status, is a problem for Southern Mediterranean countries. However, in the last five years, a whole chain of interconnected events led to a very serious test for the EU immigration policy.

It is assumed that cooperation between Member States should be based on a high degree of confidence, especially in regard to the protection of the common border on the basis of the Schengen code. Difficulties arose, first of all, with Greece as the weak link in the system of reception of asylum seekers and security of southern land border of the European Union. Giving Greece aid through the operations of FRONTEX on its border with Turkey, the Commission rose at the same time, the issue expelling Greece from the Schengen area.

The situation on the coast of the European Mediterranean became even more complicated after the Arab spring and military operations in Libya in March 2011. It is known that Silvio Berlusconi, at that time the Prime Minister of Italy, warned EU colleagues about the effects of the attack on Libya for the immigration situation in the Mediterranean region and the EU in whole. However, the expected benefits from the overthrow of the Gaddafi⁴² regime were stronger than concerns about a possible influx of immigrants.

It is to be recalled that earlier, the EU has made tremendous efforts to achieve cooperation with Libya, which as a result of lengthy negotiations assumed a duty to deter illegal immigration from the deep regions of Africa. After the death of Gaddafi, the gateway was opened. The uncontrolled flow of illegal immigrants

⁴² Muammar Gaddafi: How he died, 31 October 2011, <http://www.bbc.com/news/world-africa-15390980> (date:01.12.2011)

headed to Italy, France, Spain, Malta and Cyprus. A few years later, tragedy struck the island of Lampedusa, which was soon repeated several times. Therefore, the immigration here has aggravated the situation and increased criticism of the EU policy.

With respect to other North African countries, the European Union has for several years made significant efforts to reduce the immigration influx through dialogue and agreements (*mobility partnership*) with key countries in the region, such as Morocco and Tunisia⁴³. However, the Arab Spring gave rise to a conflict situation within the EU; the reason for it, was the decision of the government of Italy to grant short-term residence permits to several hundreds of migrants from Tunisia. So they have already benefited from this status and went to France. The subsequent Franco-Italian conflict has sparked political debate about the need to restore the border controls of the Member States. It shifted the focus of the EU immigration policy from the external dimension to the internal. As a result, several years were spent on the debate between the Commission and the European Parliament, on the one hand, and the Member States, on the other, on the change of Schengen control mechanism instead of attending to consolidate partnership with the countries of the Southern Mediterranean. Southern borders become more and more crucial to control the migration situation in the region day-by-day.

Even more complicated, became conditions for carrying out the EU immigration policy in light of the Syrian crisis that has yet to be resolved at the time of writing. While refugees from Syria found refuge in neighbouring countries like Lebanon, Turkey, Jordan, the EU could afford to respond remotely by providing financial assistance to host countries. Appeals to the Member States to resettle Syrians found no response – only a few countries, mainly Sweden and Germany, agreed to accept refugees. The increase in the number of asylum applications from Syria is forcing the EU to address the problem of Syrian immigrants already within the EU, not just outside it. There was sharp increase of

⁴³ Pasyakina L. S. EU: immigrants as need and problem. Modern Europe. 2012. No. 4 (52). P. 34-43.

migration flows since the beginning of spring 2011. That caused the crisis of the Schengen system and solidarity of the Member States that has once again demonstrated that any foreign policy actions of Member States and the EU, in general, have very specific consequences for the political situation, including the development of an Area of Freedom, Security and Justice.

Obviously, there are important consequences for the EU post-Stockholm immigration policy. The new "Guidelines", adopted by the European Council in June 2014, suggest a detailed Action Plan. Its development became the first task of the new composition of the EU Commission, where immigration matters are handled by Dimitris Avramopoulos⁴⁴. A witty idea of the new European Commission President Jean-Claude Juncker⁴⁵ to appoint to this post the representative of the "weak link" of the EU immigration policy, interested in strengthening its supranational origin, will help to consolidate the solidarity of the Member States. However, it could cause a reaction of protest.

One of the important reasons for the lack of proper understanding of the EU institutions and the Member States is the gap between the conceptual and practical implementation of basic norms of EU programs. For the EU institutions, the development of a common policy of immigration is a tool to build "ever-closer union", for the deepening of political integration.

Therefore, the general policy is the unconditional priority in the Area of Freedom, Security and Justice. This reasonable approach is able to substitute for the practical purpose of implementation, if the priority of the formal principle is

⁴⁴ Dimitris Avramopoulos is a Greek politician of the conservative New Democracy party, and former career diplomat. He has served in various high-level cabinet posts, including Minister for Foreign Affairs and Minister for National Defence, and was Mayor of Athens in 1995–2002. Since 1 November 2014 he is serving as EU Commissioner for Migration, Home Affairs and Citizenship in the Juncker Commission.

⁴⁵ Jean-Claude Juncker is a Luxembourgish politician who has been President of the European Commission, the executive branch of the European Union (EU), since 2014. Previously Juncker was Prime Minister of Luxembourg from 1995 to 2013, as well as Minister for Finances from 1989 to 2009. He was the longest-serving head of any national government in the EU, and one of the longest-serving democratically elected leaders in the world, by the time he left office,[1] his tenure encompassing the height of the European financial and sovereign debt crisis. From 2005 to 2013 Juncker served as the first permanent President of the Eurogroup.

to extend the jurisdiction of the Commission and the European Parliament to the possibly large sphere of immigration policy.

The Member States can accept an immigration policy that is effective only when it is directed at a specific goal. These include reducing the pressure of illegal immigration and of asylum seekers, integration of immigrants, no matter at what level it takes place – supranational, national, regional or municipal. Of course, there are examples of the coincidence of goals of the EU institutions and Member States. For example, as regards visa policy and border surveillance. However, EU governments have to deal with everyday pressing problems of the electorate in terms of budget cuts, so they try to resist any formal approaches of the Commission, which ultimately weaken the understanding and cooperation⁴⁶.

The Commission will have to solve a difficult task – to develop a programme of immigration policy of new generation. The interests and ambitions of the Member States would combine with a common goal that will determine the socio-economic and political future of the EU. The period of implementation of the Stockholm Programme was not very successful in this aspect. It should be noted that the "common" EU immigration policy does not imply the presence of a single set of rules, identical for all countries, but only following the general guidelines, objectives and principles on the basis of subsidiarity.

Unchanged is the fact that the European Union, despite the difficult times of crisis, remains and probably will remain attractive for third (non-EU) country nationals for a long time. This fact is of great importance at a time when European policy-makers will take concrete decisions about whether or not to limit the influx of immigrants.

⁴⁶ Collett E. Future EU Policy Development on Immigration and Asylum: Understanding the Challenge. Policy Brief. June 2014. P. 8.

§ 2. The key directions of the European Union immigration policy

Regarding the immigration policy of the European Union, it is necessary to underline the following issues (all of them are regulated separately):

- 1) asylum policy of EU Member States;
- 2) illegal immigration from the third (non-EU) countries;
- 3) legal immigration from the third (non-EU) countries.

Apart from those main areas, there are other aspects of the EU immigration policy that have to be taken into consideration such as the interaction of the EU with third (non-EU) countries on migration issues, visa regimes, the protection of the European Union borders etc. Since the task of the current thesis is to identify the key trends in immigration policy, the consideration of related issues will be carried out within the framework of these key areas.

The EU asylum policy is a part of the immigration policy. Development of the common asylum policy is defined first of all by necessity of effective system organization. It's vital to load a distribution of immigrants on each Member State in a rational way, avoiding the situation when the entire flow of immigrants goes into the country with an easier asylum regime. The most important EU directives related to this issue are the following:

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third (non-EU) country nationals or stateless people as refugees or as people who otherwise need international protection and the contents of this protection granted;
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

The main rule of Council Directive 2003/9/EC is that the State which let an immigrant onto their territory is responsible for granting refugee status. Council Directive 2004/83/EC sets the criteria according to which a person can be

categorized as "refugee". Its main provisions are based on the norms of Convention relating to the Status of Refugees 1951 and protocol relating to the status of refugees 1967.⁴⁷ It also gives a definition of a "refugee" - a person persecuted for racial, religious, political, civil, and other similar reasons. At the same time, there is a practice whereby a person is refused to be granted such a status, but citizens fall within a rule of subsidiary protection. After thorough analysis of the EU documents, we can see that there is no purpose to dispose of the status of refugee, but making the rights of different immigrants with different statuses equal. That's why the Council Directive should be revised. Currently, a person with refugee status has sustainably larger amount of rights than a citizen falling under the regime of subsidiary protection. This is evidenced by Article 33 of the directive "Access to integration facilities". This provision states that the Member States have to create programs to support the integration of refugees. At the same time the person who received the status of subsidiary protection can gain access to programs for the integration, if Member States consider it necessary.

The Council Directive 2005/85/EC of 1 December 2005 has the following background. The conditions for refugees were different in the jurisdictions of different Member States. For the EU, it would be more convenient, if conditions were the same in every Member State in order to avoid a situation whereby the main influx of migrants goes to the country with better conditions.⁴⁸ This Directive currently is under review, but many countries are opposed to changing those procedures because they don't want to toughen or simplify it. The desire of migrants applying for asylum in countries where the procedure for asylum takes less time and it is easier to pass is obvious. For a state with a light duty of consideration for the application for asylum large influx of migrants can become a burden. To avoid this situation, the procedure should be more or less the same

⁴⁷ Guy S. Goodwin-Gill / All Souls College, Oxford

⁴⁸ The United Nations High Commissioner for Refugees (UNHCR) "Response to Home Office Border Agency consultation 'The Path to Citizenship: Next Steps in Reforming the Immigration System'"

in all the EU countries. Reform of this Directive was on the agenda for a long time.

The content of the rules on first country of asylum and safe third country appear at first glance to reflect articles 26 and 27 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, with added detail on how the connection to the safe third country will be determined. The rule change signals increased consideration of the safe third country option in asylum applications, beyond the Dublin III regulation. Para 345A (iv) appears to be aimed at preventing those granted humanitarian protection from having their claims for refugee protection being considered.

Changes are made to where Refugee Status or Humanitarian Protection is revoked or ceases to apply to allow for exclusion where there are ‘serious reasons for considering’ that a person has committed a serious crime in addition to where they have committed a crime prior to their admission to the EU. ‘Serious reasons considering’ reflects language used by UNHCR but we wait to see how the provision is applied.

The changes relating to the first country of asylum / safe third country apply to all asylum claims made on or after 24 November 2016. All the other changes apply to decisions made on or after 24 November 2016.⁴⁹

There are two main purposes for the common procedure. The first is to prevent a situation when an asylum application is made to several EU Member States simultaneously. The second is to avoid the repeated requests, so, if an application was turned down in one EU country, application for asylum in a different EU country would be illegal. Formally, these directives have legal force. However, there is information by the EURODAC⁵⁰ system about frequent breaches of both

⁴⁹ N. Just Hrnčárová . Application of Right for Asylum in European Union <http://cyberleninka.ru/article/n/realizatsiya-prava-na-ubezhische-v-evropeyskom-soyuze> (date:06.05.2015)

⁵⁰ EURODAC is the European fingerprint database for identifying asylum seekers and irregular border-crossers. Council Regulation concerning the establishment of ‘EURODAC’

rules, which means that the system of laws and regulations for asylum doesn't work as it should. It's important to discontinue this practice and to implement the unified application procedure, so the plan is to revise the directives. In this case, the Member States accept this initiative half-heartedly.

In 2000 The European Refugee Fund was established.⁵¹ The European Union established the European Refugee Fund to group into a single instrument the measures concerning integration and those concerning reception and voluntary repatriation in the event of a massive influx of refugees and displaced persons. The Fund, which was set up for a period of five years (2000-04), has been extended for the period 2005-2010.

There was a problem that countries along the southern border had all the negative effects of immigration flows. So the idea was to create resettlement system. At the same time there were not so many countries that were ready to help southern EU countries despite the fact that the EU had declared the principle of solidarity. Just a few countries, notably France, were ready to give shelter to refugees that had overcrowded Malta. Others (Great Britain, the Netherlands, Denmark and Austria) refused to do so. They believed that the voluntary resettlement of refugees could trigger the unwanted effect of illegal immigration in Europe. As a result of the 2,000 refugees, only one hundred people were moved from Malta. However, the position of the European Commission was based on the voluntary consent of all the EU Member States to participate in the settlement.

In 2010, Member States of the European Union agreed to set up a European Refugee Fund (ERF)⁵². The ERF aims to promote solidarity within the European Union in matters of asylum, by supporting and encouraging the efforts of Member States on behalf of refugees in their territories. The ERF aims at improving the

for the comparison of fingerprints for the effective application of the Dublin Convention of 11 December 2000, Official Journal L 316, 2000.

⁵² Decision N 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme Solidarity and Management of Migration Flows and repealing Council Decision 2004/904/EC

efforts of EU states to grant receptive conditions to refugees, displaced people and beneficiaries of subsidiary protection, to apply fair and effective asylum procedures and to promote good practices in the field of asylum so as to protect the rights of people requiring international protection and enable asylum systems to work efficiently. The ERF from 2008-2013 has been allocated 628 million euros.

All the EU Member States, except for Denmark, are beneficiaries of the ERF. Most of the Fund is distributed to Member States, while about ten percent is earmarked for community actions involving more than one country.

Beneficiary countries develop their own multi-annual programmes for the use of the resources they receive. These can be allocated to a wide range of governmental and other institutions in areas such as education, training and research. Other beneficiaries include social partners as well as international and non-governmental organizations.

The European Refugee Fund and the European Return Fund form part of the EU framework programme Solidarity and Management of Migration Flows (SOLID). The External Borders Fund and the Integration Fund are also included in the programme.

The European Refugee Fund will be renewed by the new Asylum, Migration and Integration Fund (AMIF) with an overall budget of 3.137 million euro for 2014-2020. It will promote the efficient management of migration flows and the implementation, strengthening and development of a common Union approach to asylum and immigration. This Fund will contribute to the achievement of four specific objectives:

Asylum: strengthening and developing the Common European Asylum System by ensuring that EU legislation in this field is efficiently and uniformly applied;

Legal migration and integration: supporting legal migration to EU States in line with the labour market needs and promoting the effective integration of non-EU nationals;

Return: enhancing fair and effective return strategies, which contribute to combating irregular migration, with an emphasis on sustainability and effectiveness of the return process;

Solidarity: making sure that EU States which are most affected by migration and asylum flows can count on solidarity from other EU States.⁵³

It's important to note that on Stockholm programs, European Asylum Support Office was establishing (EASO). EASO is an agency of the European Union that plays a key role in the concrete development of the Common European Asylum System. It was established with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfill their European and international obligations to give protection to people in need. EASO acts as a centre of expertise on asylum. It also provides support to Member States, whose asylum and reception systems are under particular pressure.

However, the organization is not meant to be a single point for applications from would-be refugees. Asylum granting remains the responsibility of each Member State. The Office carries out informative, analytical (seminars, development of analytical reports), coordination (communication between national authorities of the Member States) functions. EASO will operate on the same principles as EUROPOL and FRONTEX. Though the nature of the Office's functions is purely organizational, certain opposition was expressed by the ministers of the Member States.

In May 2014, the European Asylum Support Office announced collaboration with Jordan, Tunisia and Morocco. These states agreed to participate in FRONTEX operations in patrolling the sea borders of the EU. By signing the Mobility Partnerships with Morocco (2013) and Tunisia (2014), the EU started negotiations based on a similar agreement with Jordan. However, despite all efforts, the problem of illegal immigration cannot be solved and

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https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en (date:03/03/2017)

remains one of the most pressing issues for politicians and the population of EU countries.

FRONTEX recorded in its annual report on the growth of the influx of illegal immigrants in the EU in 2013 (107 thousand) compared to 2012 (72.5 thousand). The report highlighted three disturbing factors: a significant increase in the number of refugees from Syria, conservation of a mass influx of illegal immigrants from North Africa to Italy, a sharp increase in detentions of illegal immigrants along the Western Balkan route. The number of Syrians tripled, in two thirds of cases they apply for asylum in Germany, Sweden and Bulgaria.

Those concerns were well founded. In 2015, an estimated one million migrants arrived in Europe, accounting for the record number of 1.82 million detections of illegal border crossings reported by EU Member States. The number of detections was more than six times the previous record set in 2014.⁵⁴ (Appendix 1, page 167)

In summary, it should be noted that despite the resistance and some difficulties, this area of immigration policy still can be considered as quite an advanced one.

The *Issue of illegal immigration* should be considered separately. Let's have a closer look at the statistics.⁵⁵ In 2007, the number of employers of illegally third (non-EU)-country nationals was estimated to range between 4.5 and 8 million people (European Commission 2007b).⁵⁶ It means that on EU territory, there were about 8 million illegal migrants. The illegal migration is a big issue in the EU. In 2009, for example, about 50 thousand people used the sea route for illegal entry into the countries in the Mediterranean region. In 2009, on the borders

⁵⁴ <http://frontex.europa.eu/news/frontex-publishes-risk-analysis-for-2016-NQuBFv> (12.04.2015)

⁵⁵ Labour Migration Patterns in Europe: Recent Trends, Future Challenges by N. Diez Guardia and K. Pichelmann. Directorate-General for Economic and Financial Affairs. Economic Papers N 256 September 2006.

⁵⁶ Immigration in the EU: policies and politics in times of crisis 2007-2012. Tamara Jonjić and Georgia Mavrodi. Florence, November 2012. European Union Democracy Observatory Robert Schuman Centre for Advanced Studies

of the EU 900 thousand people were detained while trying to cross the border illegally. The situation changed considerably with the unrest in North Africa, following the onset of the “Arab Spring” in late 2010 and early 2011. Because of a massive influx, via the sea, of illegal immigrants from the countries of North Africa, a state of emergency was proclaimed on 12 February 2011 by decree of the Prime Minister of Italy. In 2011, the number of landings in Italy increased substantially with respect to the preceding year. The overall number of landings from third (non-EU) country nationals during the “Arab Spring” was equal to 62,692, of which 28,123 were Tunisians, 24,431 were Libyans and were 1,620 Egyptians.

The sector of the shadow economy (with illegal immigrants employed) takes up to 16% of gross domestic product (GDP). The total number of people living in the EU currently stands at around 500 million. And the population growth is mainly due to the flow of immigrants.

There are two different types of illegal migration. The first one is the *smuggling of people across borders* (made with their consent) and the second is *trafficking in human beings*. This separation was established by protocols supplementing the United Nations Convention against Transnational Organized Crime.⁵⁷

There are Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air. There is a qualitative difference between these two components of illegal migration as two different types of crimes. Smuggling is a crime against the state, but a trafficking in human beings is a crime against the person in addition to the harm caused to public and state interests. In this connection, the Stockholm Programme created a position of the EU Anti-Trafficking Coordinator.⁵⁸ This post was established under the same initiative as

⁵⁷ General Assembly resolution 55/25 of 15 November 2000

⁵⁸ Nowadays is Myria Vassiliadou, https://ec.europa.eu/anti-trafficking/institutions/eu-anti-trafficking-coordinator_en (date:12.12.2016)

the post of EU Counter-terrorism Coordinator. It is difficult to formulate the list of its functions clearly. Mostly, it's a coordination of national authorities to combat terrorism, information functions. The Lisbon Treaty made it possible to establish such a position as the EU anti-drug Coordinator. According to some analysts⁵⁹, there is a tendency for "crowding structures" in the field of institutional regulation, which are often interfering with each other and duplicating. However, the EU keeps creating new structures with overlapping features.

In recent years, the European legislative and political framework addressing trafficking in human beings has been strengthened through the elaboration of two important instruments: *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* and the *European Commission Communication "The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016"*⁶⁰. In addition, Council Conclusions on the new EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016⁶¹, adopted on 25 October 2012, emphasizing the need to identify, assist, support, protect and compensate the victims of human trafficking, invite the European Commission to implement and strengthen actions within the Strategy and the Directive by further developing policies and approaches to address human trafficking. The EU Strategy has also been strongly welcomed by the European Parliament, who have expressed their commitment to addressing human trafficking and their support for the Commission's work in this field on numerous occasions.

According to the International Organization for Migration (IOM), in 2013 more than 3 thousand migrants died trying to cross the Mediterranean Sea⁶². The

⁵⁹Monica Den Boer. Step by Step Progress: An Update on the Free Movement of Persons and Internal Security // European Institute of Public Administration (EIPA) http://aei.pitt.edu/799/1/Scop97_2_3.pdf (date:12.12.2016)

⁶⁰ Communication The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 COM(2012)286 final

⁶¹ Council conclusions on the new EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, 3195th JUSTICE and HOME AFFAIRS Council meeting, Luxembourg, 25 October 2012

⁶² Bulletin Quotidien Europe, 11165 – 30.09.2014.

death of 300 African migrants at sea near Lampedusa in October 2013 shocked the world and became the starting point of the discussion about radical changes in the EU immigration policy. A. Alfano, at the time the The Ministry of Home Affairs of Italy, described the tragedy not only as Italian, but as European. He advocated the revision of existing rules in accordance with which the southern EU countries are forced to bear an unbearable burden with regards to the reception of asylum seekers. In turn, the European Parliament said that the tragedy could have been avoided if there was greater solidarity between the Member States and coordination of their immigration policy. The President of the European Parliament Martin Schulz called for the reform of the asylum policy in the direction of greater flexibility, in order to lighten the burden of countries having to accept large numbers of asylum seekers, for example to the island of Lampedusa, with a population of six thousand inhabitants, the adoption of ten thousand migrants seems daunting.

The EU and the Member States have rapidly responded with a number of measures that could prevent the repetition of Lampedusa tragedy. Hot on the heels of the incident at the end of October 2013, was the meeting of the ad hoc working group, which undertook the study of the migration situation in the Mediterranean and the preparation of a report with recommendations.

The heads of states and governments discussed the tragedy of Lampedusa at the special summit on 25 October in Brussels. "We must take decisive action to ensure that people do not die at sea and such tragedies do not recur," this joint statement was made by the summit participants. They reaffirmed the three principles for the EU immigration policy: cooperation with third (non-EU) countries of, strengthening of border controls and of combating human trafficking. A month later, the group presented the results of their work. The European Commission, after reviewing the report, suggested 38 specific measures in five areas that could fix the situation: increasing patrols in the common border, assistance to the EU Southern countries, expansion of opportunities of entry into

the EU by legal means, the resettlement of refugees in the EU countries, cooperation with the countries that supply migrants and transit countries.

The Member of the European Commission C. Malmström⁶³ urged the Member States to show solidarity in the resettlement of refugees, promising financial support from European funds in 2014-2020. As of the end of 2012, only 4390 people had been taken in by the Czech Republic, Denmark, Germany, Ireland, Spain, France, UK, Sweden, Portugal, Finland, Lithuania and the Netherlands, while the United States has provided its territory for 50 thousand Syrians. In April 2014, the heads of the European and African States agreed on a strategy of five points to avoid repetition of Lampedusa tragedy.

The actual statistic of 2015 became even scarier than previously approximated. There were 1.012.272 arrivals. 358.403 were arriving by sea. 4.913 are dead or missing.⁶⁴ (Appendix 2, page 168)

In the Declaration on Mobility and Migration, the member states pledged to counteract illegal migration, strengthening all-round cooperation. The Action Plan up to 2017 includes: counter-trafficking (strengthening of partnerships to prevent trafficking and prosecute those who lead); cooperation to prevent the tragic consequences of attempted illegal migration and save lives of migrants (improving migration management and border control, readmission); strengthening of the link between migration and development; promoting legal migration and mobility; strengthening of international protection.

At the same time at a session in Strasbourg, the European Parliament approved new rules for the rescue of migrants in the water and on land in the context of operations that are coordinated by FRONTEX.

The new regulations will replace the existing framework decision of 2010. In accordance with these regulations, countries are not allowed to take any action with regards to a migrant before personal identification has been completed. A

⁶³ Anna Cecilia Malmström is a Swedish and European politician who has served as European Commissioner for Trade since 2014, having previously served as European Commissioner for Home Affairs from 2010 to 2014.

⁶⁴ Statistic by International Organization for Migration <http://www.iom.int/>

migrant cannot be expelled to his homeland if his life is in danger, he faces torture or persecution. The responsibility for life and destiny of a migrant will lie on the country that took him aboard its boats. FRONTEX can take the help of the coordinating center to determine where the immigrants should be disembarked. 38% of illegals use the Mediterranean way to enter the EU through Italy; their share, however, has not reached the level of 2011, directly after the "Arab spring". Migrants from the depths of Africa were using the trail across the Sahara to Libya and thence to the Italian coast. The Greek-Turkish and Bulgarian-Turkish borders continue to be transshipment points in the Western Mediterranean area. The border between Serbia and Hungary takes the third (non-EU) place among the "hot spots" for detection of illegal immigrants (three times more compared to 2012)⁶⁵.

The conclusions of FRONTEX laid out in the European Commission report on the functioning of the Schengen area, where it witnessed a significant increase (48% compared with 2012) illegal border crossing attempts to the EU, mainly in the Mediterranean area. Most of these attempts were detected on the borders of Italy, Greece, Spain, Hungary and Bulgaria; in all, about 108 thousand illegal immigrants were detained, mostly from Syria, Afghanistan, Eritrea and Albania⁶⁶.

At the same time, the principles of developing the Area of Freedom, Security and Justice were established.

On the eve of the June 2014 summit, which was supposed to adopt new strategic guidelines for legislative and operational planning for the coming years within the Area of Freedom, Security and Justice, the EU Commission made a series of communications, summarizing the results of the five-year Stockholm programme of building space and defining the major challenges and tasks for the future⁶⁷.

⁶⁵ FRONTEX. Annual Risk Analysis 2014. Warsaw, May 2014. P. 7.

⁶⁶ Report from the Commission to the European Parliament and the Council. Fifth bi-annual report on the functioning of the Schengen area. 1 November 2013 – 30 April 2014 Brussels, 26.05.2014. COM(2014) 292 final. P. 2.

⁶⁷ Commission Communication, «An Open and Secure Europe: Making it Happen », COM(2014) 154, 11 March 2014; Commission Communication, «The EU Justice Agenda for

The Council, composed of the Ministers of Home Affairs and Ministers of Justice, also presented their vision of the new program of development of an Area of Freedom, Security and Justice for the next five years. Presiding Greece transferred it to the successor – Italy. The Ministers did not propose radical changes, but the consolidation of progress in creating space, strengthening the connection between the inner and outer dimensions, to adapt to the difficult geopolitical situation, to solve the security problem and to overcome the consequences of the global economic crisis.

Legal migration started being regulated at the EU level later than any other area of immigration policy. The previous programs such as The Plan of Tampere and The Hague Programme were more about repressive measures and combating the illegal migration.

At the same time such issues as relocation for permanent residence in the EU, as well as the integration of immigrants already living in the EU were not imposed based on the full-scale review. The situation changed after the riots of young immigrants in France in 2005, discontented with their positions in society.⁶⁸ It showed clearly that the existing mechanism for the integration of migrants into the EU didn't work properly. The Treaty of Lisbon took the trends that could be traced to other areas of immigration policy. From that moment, the decisions on legal immigration issues were adopted by a qualified majority (2/3) rather than unanimously. Issues of legal immigration became the object of regulation not only by legal acts but also such legal instruments as:

- acts of "soft law" (various kinds of quasi-legal instruments of the European Union such as *codes of conduct*, *guidelines*, *communications* etc.),
- a framework of integration,

2020 – Strengthening Trust, Mobility and Growth within the Union», COM(2014) 144, 11 March 2014; and Commission Communication, «A New EU Framework to Strengthen Rule of Law», COM(2014) 158, 19 March 2014.

⁶⁸ Immigration: France sees tensions rise five years on from Paris riots// The Guardian // Wednesday 17 November 2010 p. 23

–the open method of coordination (a way to find the best models and the convergence of practices of the EU Member States, not the infusion, but recommendations).

In order to understand the views on the legal immigration regulation in the EU it is worth checking Communication on a Policy Plan on Legal Migration (2005),⁶⁹ which set the employment of legal migrants and common principles for the management of this policy as priorities. The Plan included the draft of directives, which had to specify the conditions of entry and residence of highly skilled workers, seasonal workers, workers in the branches of international companies and interns. The plan was based on a so called "selective approach" to legal labour immigration, which was criticized by many specialists. The basic idea of this method is the admission of highly skilled workers and disregard for the rights of low and semi-skilled professionals as Sergio Carrera showed in his publications.⁷⁰

Thus, in various countries the skills required are not identical. In developed countries, indeed there is a need for specialists of high qualification, but in many others (Greece, Italy, Malta, etc.) there is a lack of semi-skilled workers (e.g., nurses, etc.). Nevertheless, the regulation of legal immigration focuses on the attraction of highly qualified workers only. The most important document in this case is Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third (non-EU) country nationals for the purposes of highly qualified employment.⁷¹ This document aims to create good conditions for relocation, residence and employment in the EU of highly skilled workers from non-EU countries. Proceeding from experience of the USA, where there is a "Green Card" for legal immigrants, the Directive introduces a special residence

⁶⁹ European Commission, Communication on a Policy Plan on Legal Migration. COM (2005) 669 final, Brussels.

⁷⁰ Sergio Carrera and Raül Hernández i Sagrera. The Externalisation of the EU's Labour Immigration Policy Towards Mobility or Insecurity Partnerships? CEPS Working Document No. 321/October 2009.

⁷¹ Journal officiel de l'Union européenne L 155 du 18.6.2009, p. 17.

in the European Union for a period of up to four years with the possibility of extension. It is called the EU Blue Card.

Holders of the European Blue Card can be any third (non-EU) country's workers who have high professional qualifications and graduated with a degree, with no less than three years of studying and people with at least five-years of professional work experience that requires a higher education. The EU Blue Card is being reserved only for highly qualified workers who are planning to work for or under the direction of a person or company. The holders of the European Blue Card are even like citizens of the European Union with regards to many laboural and social rights, including the mode of payment. They also have additional rights. For example, there is a right that after one and a half years of work in the Member State which administered the Blue Card, the worker can move to another EU Member State in order to work there. A job offer for a European Blue Card applicant must indicate a salary at least 1.5 times higher than the average annual salary in a particular Member State for workers of that particular specialty. The Member States may reduce the salary threshold to 1.2 for certain professions in case of a strong need of specific workers. It's noted in Article 5 of the Directive. For instance, in Italy a minimum gross salary should be 24,789 euros per year (for 2012), in Netherlands it is € 60,000 gross etc. Issues of legal immigration are affected in other documents, such as in the European Pact on Immigration described above. The Pact strongly emphasizes respect for national competence in the field of legal immigration. With most of the issues of legal immigration policy, the Member States has a right to take a decision autonomously.

Firstly, a common policy in the field of legal migration should aim to overcome the current selective approach and adopt common conditions for the admission of migrant workers to the EU. While the Member States are highly reluctant to do so, several arguments make this move realistic and positive. First, it would help to establish a common EU policy. Second, it will bring some coherence as for the time being, migrant workers who do not fall within the scope

of existing EU rules are confronted with 28 different national legislations setting different conditions for admission. Hence, having common rules and setting common conditions applicable in all Member States would portray the EU as a unique and coherent area. This would also make the EU more attractive and help it to compete with other regions in the world, not least for much-needed talent. Thirdly, the definition of common conditions does not imply that Member States are losing sovereign competences. If the conditions are harmonized, the Member States will still decide on applications, as is currently the case in the field of short-term visas. Finally, making such a leap should not be a big problem. According to the the Organisation for Economic Co-operation and Development (OECD)⁷² (Appendix 3, page 169), the majority of European countries have already established the same type of labour migration system, i.e. demand-driven systems where migrant workers are entitled to migrate in so far as they have a job offer. Hence, moving towards a common scheme would not be impossible.⁷³

In conclusion, it is necessary to underline the shift of direction in the EU immigration policy. Previously, it was possible to talk about the dominance of repressive measures and the key importance of the term "deportation". But now we should note that there is a change in the direction of a rational (not protective) immigration policy. There is increasing emphasis on the simplification and harmonization of the asylum institution, as well as the integration of immigrants into the European society. As a matter of fact, the European society has just started changing its attitude to immigration processes. However, there is a clear understanding that the key to further EU development is the ability to manage immigration flows, not to restrict them.

After the crisis recovery, the EU fails to maintain its competitive position in the world, without using the potential of managed, legal migration. The population of the EU, according to Eurostat, over the next 50 years will increase

⁷² <http://www.oecd.org/> (12.01.2017)

⁷³ Yves Pascouau. EU immigration policy: act now before it is too late// 20 June 2013

by 10 million people, but at the same time the number of able-bodied citizens will be reduced by 50 million.

It is estimated that by 2060 in the EU, there will be about 58 million immigrants. Given the lack of its own workforce (already in 2015, the EU will lack 700 thousand specialists in the sphere of information technologies, and by 2020 there will be a wide shortage of medical workers- 2 million), their potential should be optimally used⁷⁴. The European Union should remain attractive to talented and skilled workers⁷⁵, not only from the point of view of the possibility of high earnings, but also for decent conditions for work and accommodation.

Thus, the demographic prospects of the EU require efficient and well-managed policy in the sphere of migration. In February 2014, the Commission published a report on the outcome of migration policy, in which were noted the efforts to maintain the EU's attractiveness for talented and skilled employees, to optimize the potential of legal migration.

The Mobility Partnerships were established and implemented with Moldova and Cape Verde (2008), Georgia (2009); Armenia (2011), Azerbaijan and Morocco (2013), Tunisia and Jordan (2014). The purpose of these partnerships is the general regulation of migration flows, the promotion of legal immigration and integration of immigrants⁷⁶.

Among the measures, allowing to unlock the full potential of migrants are the recognition of foreign diplomas, language courses of appropriate level and ensuring access to various programmes on the labour market, the promotion of participation in society, cooperation with the business community and social partners. The European Union could get more benefit from immigration, if the

⁷⁴ Govorova N. Social policy. The European Union: facts and comments, issue 63-64: January-June 2011. P. 24.

⁷⁵ To improve attractiveness for skilled labour (researchers, postgraduates, students) in February 2014 was adopted (in first reading) a bill to facilitate the entry and stay of this category of migrants; in May, the Council adopted a Directive on the facilitated conditions of entry and residence of highly skilled employees of TNCs.

⁷⁶ Potemkina O. The area of freedom, security and justice. The European Union: facts and comments, issue 75: January-April 2014. P. 26-27. http://www.edc-aes.ru/data/edcaes/content/user_files/images/75.pdf.

government and society perceive migrants as a promising resource, and the expenses for migration policy as necessary and profitable investment.

Chapter II. Approaches to the immigration regulation in the European Union

§ 1. Theoretical and practical aspects of the integration of immigrants in the European Union

The scholarly literature pays much attention to the integration of a significant number of migrants, most of them being representatives of different ethnic, cultural and linguistic communities. Similarly, the integration represents a separate area of the common immigration policy of the EU. So, what is understood under the concept of "the integration of immigrants" in theoretical studies and in actual political practice?

The integration is broadly defined as inclusion and involvement of immigrants in the host society. However, this definition is too abstract to use in the analysis of the actual immigration policies. The Oxford Advanced Learner's Dictionary defines the integration as follows:

- "the act or process of combining two or more things so that they work together" (general definition);
- "the act or process of mixing people who have previously been separated, usually because of colour, race, religion, etc." (definition applicable to the present research)⁷⁷.

However, the first and even the second definition are far from satisfactory: the first is general; the second one is too literal. A simple combination of children of different races in the same class does not mean integration itself, because they do not necessarily start to communicate, i.e. to interact. Which means it does not satisfy the condition of the first general definitions - the condition of the group activity.

The notion of integration seems so complicated that even researchers in this area rarely attempt to give it a specific definition. This happens to a great extent due to the fact that when considering any integration policy in certain countries,

⁷⁷ Oxford Advanced Learner's Dictionary of Current English // Sixth Edition. Ed. by Sally Wehmeier. Oxford University Press, 2000.

the essence of the integration process appears different, it involves different forms and different levels of inclusion and involvement. The European countries have always been creating their model of social integration on the basis of their political and cultural traditions, as well as taking into account the socio-economic characteristics of immigrants. Basic models – assimilation, isolation or multiculturalism – were unique in different countries. Now, we should refer to the concepts of "assimilation" and "multiculturalism". Assimilation is about the tendency of the minority constituencies to dissolve into a wider, dominant culture or society.

Multiculturalism implies a mutual, equal recognition and acceptance by local people and migrant populations of the values and traditions of each other. The extreme form of multiculturalism is the coexistence of both categories practically in isolation (on a voluntary basis), but with one common base. Such a base is a general, mutually agreed, political structure of the state, based on common, shared political values, that is, integration into the socio-political sphere. Without such a single binding base integration is not realistic at all, thereof it will be impossible to consider this coexistence in the context of integration.

Considering that assimilation is the integration by full absorption, "dissolution" of any community «A» in the community «B», theoretically the assimilation of immigrants by the indigenous population, and the reverse process - the assimilation of the indigenous population by immigrants is possible, whereby these two processes are directed opposite ways. However, it does not exclude the other category of assimilation - mutual assimilation, that is, the mixing of two communities, each of which contributes an equal share in the process of assimilation. The opposite of this category is the absence of any assimilation, completely segregated communities. Multiculturalism may be perceived as an approach equidistant from all four of the above categories.

Consequently, integration covers the totality of these four categories, in which elements of inclusion and participation are presented to various degrees. Naturally, except for the absolutely segregate communities, which in practice is

unattainable. So, when considering the practical embodiments of integration, it is necessary to act based on the concept of assimilation. The ideal model of multiculturalism is a kind of "golden mean" between assimilation and segregation.

The development of a political program at the domestic level regarding migrants, ways and extents of integration depend on how the governments of the recipient countries want to see their countries in the long term. The choices, in fact, are limited: assimilation or segregated coexistence with a view to a division of the state. Such a political program is intended for the long term, over a hundred or even several hundreds of years. Multiculturalism in optimal conditions, close to the ideal model of "the golden mean" between assimilation and segregation, is difficult to implement in the long run. Being unstable, it is difficult to sustain it in a certain form, because the trend of "sliding" into extremes will be tracked: the same segregation (primarily) and assimilation. However, at the present stage, other methods of integration are not yet known, and states, including European ones, have to resort to the practice of multiculturalism.

Let's consider what type of integration takes place in the European Union.

In the late 1980s and early 1990s, the European authorities had adopted the idea of multiculturalism in search of alternatives to the practice of assimilation. Presently it is being dropped, as criticized for the imperfection. There is a lot of debate in the European scholarly environment regarding immigration policies. This applies not only to practical issues, but and, above all, to the theoretical aspects of understanding integration as a process and phenomenon in the European countries. There is no consensus about what is meant by integration. In the works of European researchers, different definitions are given. Please refer to the official definition of integration, which is given by the European Commission in the "EU Agenda on Integration":

"Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States"⁷⁸.

This definition of integration implies a certain degree of mutual assimilation to the extent necessary for conflict-free coexistence of immigrants and indigenous populations. Thus, integration is aimed not only at immigrants but also at indigenous populations.

This document reflects the overall position of the EU towards understanding and interpreting the integration of immigrants. Special characteristics of integration in the EU are as follows:

1. Integration implies respect for the basic values of the European Union.
2. Employment is a key aspect of the integration process and a central aspect in the participation of immigrants, in their contribution to the development of the host community, and in what makes their contribution significant.
3. Basic knowledge of the language, history and institutions is indispensable for integration; enabling immigrants to acquire this knowledge is an indispensable condition for successful integration.
4. Efforts towards the education of immigrants are essential in preparing immigrants and particularly their descendants, to become more successful and active participants in society.
5. The access of immigrants to institutions and services, both to public and private ones, on the basis of equality with nationals of the EU Member States.
6. Non-discrimination is a key to successful integration.
7. Regular interaction between immigrants and citizens of Member States is a fundamental mechanism for integration. Communication, intercultural dialogue, acquaintance with the life and culture of immigrants, the promotion of improvement of living conditions in the urban environment increases the interaction between immigrants and citizens of the EU Member States.

⁷⁸ A Common Agenda for Integration. Framework for the Integration of Third-Nationals in the European Union. COM(2005)389 final // The official website of European Union law – www.eur-lex.europa.eu.

8. The diversity of cultures and religion is guaranteed by the Charter of Fundamental Rights of the European Union⁷⁹ and shall be guaranteed, to the extent it is not inconsistent with other inviolable rights of the EU or the national law of Member States.

9. The participation of immigrants in the formulation of integration policies and measures, especially at the local level, supports their integration⁸⁰.

Thus, different programs and other actions are supposed to be introduced to ensure that newly arrived immigrants from third (non-EU) countries understand, respect and benefit from common European and national values.

However, it is not clear how to define what common European and national values mean. Even if some of them are possible to define, how can we make sure that immigrants know, understand and respect them?

Of course, in many countries there are so-called tests of naturalization. Whereby a person applying for citizenship is obliged to answer a set of questions showing his knowledge of and loyalty to the basic values and culture of the host country. It is impossible to deny some benefits of these tests. However, they are often justifiably criticized, as even citizens do not know or do not welcome certain values or facts about their country, the knowledge of which the authorities require from immigrants.

Another distinctive feature of the integration policy of the EU towards immigrants is focused on the economic role of immigrants. Employment and (economic) contribution to the development of the host community are prioritized compared to other aspects. Integration is considered from the point of view of economic participation of immigrants in the life of the recipient country, the economic benefits as the main advantages of migration processes.

⁷⁹ Charter of Fundamental Rights of The European Union (2000/C 364/01) http://www.europarl.europa.eu/charter/pdf/text_en.pdf (date:01.03.2017)

⁸⁰ A Common Agenda for Integration. Framework for the Integration of Third-Nationals in the European Union. COM(2005)389 final // The official website of European Union law– www.eur-lex.europa.eu.

Integration is considered through the prism of the principle of mandatory participation in the economics by many European researchers and political figures. For example, Janis Varvitsiotis, the Chairman of the Constantinos Karamanlis Institute for Democracy represents this view:

"Integration is a process in which immigrants participating in society in various fields, develop their abilities in accordance with the opportunities and willingness to contribute, with minimum restrictions and maximum possible independence, and are able to live and work without feeling discrimination."⁸¹

The emphasis is on their contribution to society and the absence of discrimination from the society.

In addition to the above, immigrants are purposefully and significantly affected by the community of the recipient state not only in the economic sphere, they are also acculturated: knowledge of language, basic values, and history is required.

Integration in relation to the indigenous population of the Member States is sometimes limited only to educational, informational promotions regarding immigrants to relieve the tension and obviously suspicious attitude towards immigrants. Immigrants are also adapted to the existing society in many ways.

Recently, voices in favor of the model of the "dominant culture" ("Leitkultur"⁸²) are being raised in the EU. This notion implies the dominance of the culture of the host community over a culture of immigrants, which is inconsistent with the idea of equal and mutual harmonization of cultures. In this regard, it is not entirely true to speak about multiculturalism in the EU. We can agree that there are some of its features, but it is impossible in the EU as a single concept (like a Canadian example). The ideas of multiculturalism can only defuse

⁸¹ Varvitsiotis I. Is a Common European Immigration Policy Possible? // European View: Europe and Immigration., 2007.

⁸² N. N. Varuhina. Management of immigration processes in the European Union: the experience of Germany.// Space and time in world politics and international relations: proceedings of the 4 convent RAMI. In 10 vols / ed. by A. J. Melville; M.:MGIMO-University, 2007./Vol. 9: Perspectives of supranational governance in the global and regional scale // Under the editorship of O. N. Barabanov.

tensions in the society with a large share of the foreign population, besides, not for the long term, as the practice of the refusal of multiculturalism in the EU confirms it.

Many researchers and politicians recognize that integration as a way of incorporating immigrants and non-citizens has failed. The cause of this failure, according to the researchers, became, firstly, the very essence of the concept of integration and, secondly, the different interpretation of this concept (on the national level in individual Member States).

Many see the reason why attempts to integrate a great number of immigrants into Europe failed in the absence of a defined consistent approach in the policy of integration at the supranational and national levels. At the state level, it is necessary to define the boundaries of integration, for example, leaving beyond the private lives of individuals, their religious affiliation and cultural characteristics.

The degree and quality of integration of immigrants will depend on the level of integration: closer to assimilation or multiculturalism. Of course, it will still depend on how homogeneous the host societies in the recipient countries are.

Integration is a complicated, multifactorial process, which involves various channels of integration. We can identify the following channels of integration: professional integration corresponding to the demand in the labour force of the host state; economic and financial integration, concerning the participation in financial and economic relations; legal integration, involving the gradual specialization of the legal status (registration, residence permit, etc.). Of particular importance is the cultural integration, because even full legal citizenship does not mean leveling ethno-cultural peculiarities of social groups of immigrants, which, consequently, implies the existence of political subcultures.

In political practices, the balance of the political culture of the state and its subcultures is important, because separation of the subcultures of immigrants may

lead to negative consequences, as evidenced by, for example, the events in France at the turn of the Millennium, when direct showdowns took place⁸³.

At the national level certain models of political culture are being formed. The presence of immigrant communities (which are often also geographically localized) involves the formation of political subcultures and gradual adaptation of a specific social group to the dominant political culture. The efficiency of the state immigration policy is to bring this subculture to the dominant political culture, so as this subculture adopts a set of political values and behaviours and do not become a destabilizing factor. The absence of continuity and consistency in the state immigration policy can lead to outbursts of xenophobia and the growth of ultra-right views in the host community on the one hand, and discontent and political aggression in the immigrant communities on the other hand.

Thus, the formation of an integrated political culture of the state and the optimal integration of political subcultures of immigrants is a necessary condition for the constructive development of society and the stability of the political system.

The next problem is how to influence immigrants to ensure that they recognize and accept political, cultural and other values that are different from theirs (i.e. the values of the host community). Forced assimilation, widely practiced in human history, does not fit into the modern European framework of human rights ideas and totally contradicts liberal-democratic values.

How and by what criteria is it possible to determine that the worker refuses to integrate, despite the given opportunities? In fact, European governments are unable to exert any pressure on immigrants forcing them to integrate, if they do not wish to integrate.

The mechanism of integration in the EU does not function ideally. The situation with the Roma inclusion in the European Union is only one of many

⁸³ Oleg Zagonov. The riots in France: nature, causes, lessons. // Analytical note of the Scientific coordination Council on international researches of MGIMO (University) of the MFA. Issue 6 (14), March 2006.

pieces of evidence. In this case we are talking about EU citizens, not immigrants. The events in France in the autumn of 2010 relating to the expatriation of the Romanians; show that the EU has not developed an effective algorithm of integration even for its own citizens⁸⁴.

Aborted attempts to integrate immigrants in the host society are caused by several factors.

Firstly, the formation of the basis and implementation of integration policies was within the authority of national states. The joint initiatives of the Member States could be taken only through a unanimous decision of the Council of the European Union. So, in fact, the states were entitled to act on their own on the issues, on which there was no consensus in the Council, and independently had the right to influence the formation of public policy in this area. However, even this indirect participation had a positive impact, as it allowed them to elaborate a unified strategy of development of this sector, to identify by comparison positive experiences of different countries, which could be used in other EU Member States. Currently, the Lisbon Treaty has changed this provision, "transferred" many of the issues of the immigration integration policy to the supranational level and given the EU institutions the opportunity to pursue a common policy in many

⁸⁴ After the accession of Bulgaria and Romania to the European Union on 1 January 2007, the Romanians living on the territory of these states also automatically became citizens of the United Europe.

However, temporary restrictions to work in other countries of the European Union may apply to the nationals of these countries for a transitional period for no more than seven years. Currently, the right to stay on the territory of other state for citizens of Bulgaria and Romania was limited to three months. A longer stay was possible in case of studying, employment and in some other cases. The confirmation of sufficient funds is mandatory to stay in another member state of the EU. In connection with the violation of these norms about 10 thousand Roma were sent from France to Romania and Bulgaria in 2009, but most of them soon came back. In 2010, more than 8 thousand Roma were expatriated. It was planned that in March 2012, both countries will join the Schengen area, and then the Romanians and Bulgarians would have the right to work in any other EU country, including France. The French side expressed the position on a possible delay of this law, if the Romanian and Bulgarian authorities do not put things in order with the Roma integration in their societies and would not thereby restrict their travel to other EU countries. In response to this statement the Romanian President Traian Basescu called on the EU Members States to develop a joint program of the Romanians a integration in the European society. Possible effective solutions and the integration mechanism for this situation can be applied in relation to immigrants on the EU territory.

areas of integration of immigrants. This issue is solved now by voting on the basis of a qualified majority in the EU Council.

It is still premature to speak about a significant reduction of the role of the nation state in the context of the development of supranational structures and in relation to increasing globalization in general. To a great extent, the control over the immigration processes still remains in the authority of the national states. Besides, virtually any law relating to the regulation of immigration is carried out within the national state. The implementation of all acts depends on the states themselves. Despite the introduction of the common visa, common external borders, common asylum policy, one of the main prerogatives of the national state still remains unchanged, namely: the national government has the ability to determine who refers and does not refer to its citizens; controls entry and exit in relation to third (non-EU)-country nationals. It should also be noted that some countries, such as Great Britain, have not entered the Schengen area and have their own national visas. However, after the Brexit verdict, this fact cannot be taken into account anymore.⁸⁵

This is due largely to the fact that the European States are not yet ready for the transition to a fully supranational immigration management.

Meanwhile, the appearance of a large number of migrants places a question about a fundamental transformation of the European society. The absolute majority of the European countries have developed through history having basically their own ethnic nations.

Contemporary migration trends have concluded the process of transformation of the ethnic nation into the so-called nation-co-citizenship. The process is not going to be soft and painless. As noted by some researchers, the presently dominant scheme of "nation-state" will turn into "state – many nations," in which non-indigenous populations will continue to demand new rights⁸⁶. The

⁸⁵ Brexit: All you need to know about the UK leaving the EU, By Alex Hunt & Brian Wheeler <http://www.bbc.com/news/uk-politics-32810887> (date:05.11.2016)

⁸⁶ Fedorov V. The Collapse Of Europe? (one of the possible scenarios of the future) // Contemporary Europe, №3, 2005.

traditional state-nation will retreat for pacification, and, in the end, its own priority will be questioned.

That is why the problem of social integration of immigrants in the EU is the most important. All these countries are faced with the following issue: how to adapt different socio-cultural groups of immigrants, while maintaining the customs and traditions of the host society? Can the "dominant" national culture coexist with a variety of subcultures of immigrants? As a reflection of this process was the introduction of the so-called Institute of the "civil citizenship" which is associated with the Institute of the EU citizenship.

The Treaty on European Union (The Maastricht Treaty)⁸⁷ established EU citizenship. Pursuant to Part II, article 8 (article 17-22 of the consolidated version of the Treaty on European Union), citizens of Member States of the EU received the status of the EU citizens, in addition to the national citizenship, but without replacing it. The EU citizens acquired additional rights (the freedom of movement, the freedom to stay anywhere in the EU, the right to elect and to be elected in local authorities, to appeal for the defense of their rights to the European Parliament and other rights). The great euro-believers associate further successful development of the European integration with the future replacement of national citizenship by the EU citizenship⁸⁸. Even if it will not be implemented in the foreseeable future, the introduction of the European citizenship is psychologically important, namely, gradually to accustom Europeans to identify themselves with the European, and not with the national-ethnic community. A number of authors share the idea that European citizenship is a very special phenomenon, a kind of "post-national" citizenship, based not on nationality, but on a commitment to universal rights, and involving the so-called "inclusive multiculturalism"

⁸⁷ The Treaty on European Union (Maastricht, 7 February 1992) // reference legal system "Consultant".

⁸⁸ Ryazantsev S. Migration trends and international security. // The magazine "International processes". Part 1. Issue № 3 (3). September-December 2003 .

("Inclusive Multiculturalism"). In other words, this concept can be described as a "cultural pluralism"⁸⁹.

The Hague Programme – the program on strengthening freedom, security and justice in the EU, has set a task to create a unified system of admission of refugees and applicants for political asylum. The EU has also been taking a more active role in solving the problems of employment, paying attention to the education and training of immigrants, especially young people, decisions were made on the gradual convergence of the rights and duties of the EU citizens and immigrants.

Immigrants from non-EU countries, until the mid-2000s could not become citizens of the EU regardless of their length of residence in a particular EU country because they did not have citizenship. This was not conducive to the integration processes.

The so-called Institute of "civil citizenship" was approved by the decision of the EU summit in Tampere in October 1999. In fact, it is a form of citizenship for non-citizens and for foreigners legally residing in the territory of the EU for a long time. This step was taken in order to equalize the rights of immigrants from different countries of the EU, because national legislation provided various rights and freedoms for them. The notion of "civil citizenship" was proposed in the Communication from the Commission on immigration, integration and employment in June 2003⁹⁰. According to this, immigrants should be provided with certain basic rights and responsibilities which they will acquire gradually over several years. Over time, even without going through the naturalization, they will be equal in rights with citizens of the host country.

⁸⁹ Inozemtsev V., Kuznetsova E. Dilemmas of European integration. // The electronic version of the journal "Cosmopolis" - www.cosmopolis.mgimo.ru/index.php?option=com_content&task=view&id=109/ (12.12.2015)

⁹⁰ Communication of European Commission on Immigration, Integration and Employment. Presidency Conclusions – Thessaloniki, 19 and 20 June 2003. // Official website of the European Union - www.europa.eu.int

The Charter of Fundamental Rights of the European Union⁹¹, adopted on 07 December 2000 in Nice, and adapted in connection with the adoption of the Lisbon Treaty in 2007, established the right of legal immigrants from third (non-EU) countries on basic human rights (such as respect for human dignity), social and other civil rights (freedom of movement, non-discrimination on grounds of nationality, etc.). In fact, immigrants (with certain reservations) were entitled to have all the rights of EU citizens, except for the main political rights (right to elect and be elected to the European Parliament, to participate in national elections).

For progress in the process of integration plays an important role, as mentioned in Chapter I of the present work directives, that regulate the arrival and residence of immigrants in the European Union: Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification and Council Directive 2003/109/EC concerning the status of third (non-EU)-country nationals who are long-term residents (came into force in January 2006).

According to the latest Directive, the immigrant, under the conditions of continuous residence within the territory of the EU for five years, medical insurance and adequate resources for self-dependence, acquired resident status of the European Union. This status provided certain rights that are the same for citizens of the Union, such as: the freedom of movement, the freedom to stay anywhere in the EU, the right to work, for education, the right for a family reunification, etc. In recent years there has been a definite change on the principles of social integration. It is a topical issue not only of rights but also the duties of immigrants in relation to the receiving side (law-abiding, taxpaying, and respect for religious and cultural traditions, knowledge of language and history of the country). These changes of principles are reflected in several documents (the European Pact on Immigration and Asylum; the Declaration adopted at the conference of EU Ministers in Vichy in November 2008). In this Pact, was

⁹¹ Charter of Fundamental Rights of the European Union (2000/C 364 /01) / Official website of the European Parliament www.europarl.europa.eu/charter/pdf/t:ext_en.pdf (date: 01.03.2017)

stressed that the EU's policy in the field of integration of immigrants shall be built with an emphasis on respect for the national identity of EU Member States and their fundamental values. The same provision was repeated in the Declaration of Vichy, where it was proposed to develop general principles for immigrants' integration based on European values that define the EU countries themselves.

The concept of "civil citizenship" involves the notion of "civic integration" as a new model of integration of immigrants. The concept can have the following meanings: 1. The development of the legislative framework in the field of integration. 2. The development of language courses, preparatory programs, other measures to facilitate social adaptation of immigrants. It is expected that third (non-EU) country nationals should know and respect the history and government of their host country, recognizing the fundamental values of the EU. Thus, civic integration implies cultural and social integration.

It is worth saying that for those purposes, they established a special European Fund for the Integration of non-EU immigrants (EIF), whose budget was 825 million euros for the period 2007-2013. The aim of the Fund was to support the integration of national adaptation programs of immigrants, language courses, programs that introduce the history and culture of Europeans. The Integration Fund was based on central principles of integration and subsidiarity, financing specific projects of the EU Member States. Currently the Asylum, Migration and Integration Fund (AMIF) was set up for the period 2014-2020, with a total of 3.137 billion Euro for seven years.⁹²

Since 2005, under the auspices of the Directorate of justice, freedom and security, a network of National Contact Points at the level of the relevant ministries was created (interior, labour and social policy) for sharing experiences. Nowadays, the system has become more developed. Directorate-General of Justice, Freedom and Security was split in 2010. Then, the position of Directorate-General for Justice and Consumers in European Commission was established. The

⁹² https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en (date: 01.03.2017)

role of the body is to ensure that the whole European Union is an area of freedom, security and justice.⁹³ (Appendix 4, page 170)

The network of National Contact Points (NCPs) is the main structure to provide guidance, practical information and assistance on all aspects of participation in Horizon 2020⁹⁴. NCPs are also established in many non-EU and non-associated countries ("third non-EU countries").⁹⁵

NCP plays an important role in the exchange of information on national integration policies, the most successful examples and achievements. The experience of the NCP was summarized in several reports of the Commission on migration and integration and used for the publication of the "Handbook on integration for policy-makers and practitioners". The book consists of 4 sections in accordance with the "basic principles" of the EU policy: the main directions of integration of immigrants, housing problems, the situation of immigrants in the labour markets and integration management. In turn, eleven basic principles have been endorsed by the European Council in 2004 with the aim of creating a clear framework for the integration of citizens of non-EU countries, to assist Member States in the formation of policies of integration⁹⁶.

Using the network of National Contact Points in the long-term vision is assumed to create a common EU system of integration of immigrants, based on common principles and objectives, with mandatory monitoring of successes and failures.

⁹³ http://ec.europa.eu/justice/index_en.htm (date: 03.12.2016)

⁹⁴ Horizon 2020 is the biggest EU Research and Innovation programme ever with nearly €80 billion of funding available over 7 years (2014 to 2020) – in addition to the private investment that this money will attract. It promises more breakthroughs, discoveries and world-firsts by taking great ideas from the lab to the market.

⁹⁵ http://ec.europa.eu/research/participants/portal/desktop/en/support/national_contact_points.html (date: 03.12.2016)

⁹⁶ O. Y. Potemkina "Europe: new realities. EU immigration policy: from Amsterdam to Lisbon", World economy and international relations, 2010, № 4.

For the moment, monitoring of the situation in this sphere is carried out in the framework of the project The Migrant Integration Policy Index, MIPEX⁹⁷. The index of integration policies towards migrants from third (non-EU) countries reflects the level of freedoms and opportunities provided by legal migration in the host country. By the migrants, the author is referring to third (non-EU) country nationals for a long time legally residing in the territory of the EU Member State. This category does not include citizens of other EU Member States, refugees, internally displaced persons, irregular migrants or former migrants from third (non-EU) countries, who have already obtained the citizenship of any state of the European Union.

The Migrant Integration Policy Index⁹⁸ provides significant data analysis. To monitor the integration, they applied 142 indicators, divided into six main groups: the access of immigrants to labour market, conditions of family reunification, conditions of long stay, political participation, access to citizenship, the policy of non-discrimination.

The analysis of these indicators shows that immigrants are integrating, primarily in the economic sphere. This seems logical, considering the fact that most migrants initially were involved in the European countries to cover the labour deficit in the domestic markets of these countries. For the effective implementation of migrants' economic activity is necessary to create normal conditions of non-discrimination (in employment, in solving everyday problems), clear channels for long-term stay and so on. In addition, for the regulation of the labour market, it is much easier to use immigrants without granting them citizenship (in the case of economic downturns and unemployment, migrants can be left without allowance and deported to the country of source).

Immigration is beneficial for recipient countries, as it is one of the necessary conditions for the effective use of their relatively high human potential. Illegal

⁹⁷ The Migrant Integration Policy Index (MIPEX): Benchmarking integration of migrants in Europe. Electronic source - www.britishcouncil.org/ru/austria-projects-migrant-integration-policy-index.htm (date: 03.12.2016)

⁹⁸ www.mipex.eu (date: 03.12.2016)

immigration is doubly beneficial. An illegal immigrant, deprived of any rights, will not present demands to the employer to improve their conditions of work, salary increases, etc. The benefits of immigration are felt by everyone who experiences an immigrant as an employer, owner, service consumer⁹⁹.

While the political participation of immigrants has not been considered in many countries as an essential element of their integration, when in fact the individual should have the right in any way to influence the political decision-making in the country in which he resides and to which treasury pays the taxes (at least, to influence decisions that directly affect the very category of immigrants from third (non-EU) countries).

Remarkably, there is an approach according to which citizenship is granted to already formally integrated immigrants who are "incorporated" into the culture of the host society. After the granting of citizenship surveillance and monitoring the actual integration of yesterday's immigrants are not maintained. It remains to say that, in fact, an effective mechanism for the implementation of cultural integration and its monitoring to date has not been developed. Thus, it appears, that one of the reasons is the formation of immigrant subcultures with different values from the host community values.

Moreover, it is important to understand how things work not only with regards to the "legal layer" of migrants, but the illegal category of immigrants in the EU. Taking into consideration that in practice many of them will be somehow legalized (at least involved in economic relations within the EU), it would be logical to create special indicators showing the situation with the flow of illegal immigrants¹⁰⁰. Currently, this group is considered in the framework of criminal statistics. However, not all were deported. Understanding of the mechanism of full engagement "remaining" in the life of the country and the development of

⁹⁹ A. G. Vishnevsky. Alternative migration strategies. // "Russia in global politics". No. 6, November - December 2004.

¹⁰⁰ S. Ivanov. Labour migration: factors and alternatives // "Russia in global Affairs", № 3, May – June 2006.

such a mechanism are very important elements of the migration regulations, which require appropriate regulation.

In light of the above results, the initiative of the European Union on the introduction of civic citizenship for immigrants legally residing in the EU, is an important step towards developing a policy of inclusion of immigrants in the social and political life of the host society.

Thus, the European Union needs a common policy framework, including a flexible system of reception of immigrants, taking into account both the increased mobility of the population and the structure of national labour markets. However, despite the apparent reversal in the direction of *communitarisation*, the question of jurisdiction in the sphere of attracting a foreign labour force remains unchanged: the overall policy framework will be created with the obligatory account of the powers of Member States in determining the number of migrants arriving for employment.

However, the integration of an increasing number of arriving migrants, their "naturalization", the transformation of their own or their children's generation into a fully-fledged, integrated contingent sharing social and cultural traditions of Europe, meets the underlying interests of the EU Member States and of the European Union as an integration association.

§2. Global view on an immigration regulation. USA experience.

These are the top 10 countries with the most foreign born immigrants.¹⁰¹

Number 10 is Spain. Romanians are the biggest group of foreign born in Spain. Most Spaniards think it would be Moroccans because of its proximity to Morocco, they are basically neighbors. Romanians in Spain became more numerous than Moroccans around 2007. Latin American immigrants are also well represented because of the appeal of still being able to speak Spanish and every other country on this list draws immigrants mainly because of their relatively strong economies. Although Spain has taken a big hit after the global financial crisis led to the collapse of a big part of the market. With half a million immigrants, Australia is number nine in the list. There are a lot of Brits living in Australia. The next biggest contingent, is the Chinese. In fact, of all the countries in the world, Australia is home to the most British immigrants. Australia's foreign-born population in relation to the rest of the countries is pretty large, with more than 1 of 4 of Australia's residents coming from some where else.

Number eight is Canada, even though Canada and USA share one of the longest borders in the world, there are only 317,000 US citizens living on its northern border. Canada is the home for the biggest Hong Kong community outside of Hong Kong. To reciprocate, Hong Kong is home to the most Canadians of any city in Asia.

France with 7.430.000 immigrants is number 7 on this list. Its largest immigrant group is from Algeria. The Algerian foreign-born population is larger than 1 million people. Algeria was a colony for more than a century before it declared independence in 1962. That's why the ties between the two countries have become deep.

Number six is the United Kingdom. As an island nation, it's easier for United Kingdom to regulate immigration. Just like France, the UK is the biggest recipient

¹⁰¹ According to International Migration Report 2013 by the United Nations <http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2013.pdf> (date: 03.12.2016)

for a former colony, in this case, India which UK ruled until 1947. After pushing to join the European Union in 2004, the number of Polish people coming to the United Kingdom increased sharply. The UK is now home to more Polish immigrants than any other country in the world. Obviously the UK doesn't like this effect that has become one of the reasons for the Brexit.¹⁰²

With 7.8 million immigrants, the United Arab Emirates is number five on this list. The staggering 83.7% of the people living in the UAE were born in another country. That's by far the highest rate in the world. Indian Bangladeshi Pakistani workers arrive by the hundreds to help build the UAE.

9 million foreign-born people stay in Saudi Arabia which is one of the world's biggest exporters of oil. It drives the entire economy and attracts millions of immigrants. The vast majority of migrants are workers that come from the Indian subcontinent and Southeast Asia and Africa. They are employed in agricultural cleaning and domestic service industries.

With nearly 10,000,000 immigrants, Germany is number three on this list. Turks are the largest immigrant group in Germany.

That trend began on a wide scale during the labour shortage in the 1960s and 1970s in West Germany, which the government solved by striking a labour trade deal with the government of Turkey. The more than 1 million Polish immigrants in Germany make sense because the two countries are neighbors. After the collapse of the Soviet Union and the Berlin Wall, more than 1 million Russians were attracted to Germany like the Poles because of the strong German economy.

Number two is Russia with more than 11 million immigrants. All 10 largest immigrant groups came from countries that used to be part of Soviet Union. Immigrants come because the Russian economy is stronger than economies of other post-soviet countries. The number of people leaving Russia is 186. 382. That's more than five times as many as left the country just three years earlier in 2010.

¹⁰² Oscar Silva-Valladares. An Immigrant's Case for Brexit. June 14, 2016.
<https://www.geopoliticalmonitor.com/an-immigrants-case-for-brexit/> (date: 14.12.2016)

Number one is United States of America with more than 45 million foreign-born residents. One of every five people in the world who is living outside of their country of birth lives in the United States. That's the single biggest reason why the Americans lead the world both economically and culturally. The 13 million Mexicans living in the USA make up the largest group of immigrants anywhere in the world. Today Asians, - which includes, and are driven by, Chinese and Indians - are the largest immigrant group coming to USA.

Previously in a chapter above Migrant Integration Policy Index was mentioned. According to it USA's rank is 9 out of 38 and MIPEX Scores are 63.¹⁰³ (Appendix 5, page 172)

That means by MIPEX that USA is *sightly favourable* in the sense of the acceptance and integration of immigrants. In contrast, Spain has 60 MIPEX points. Greece and Slovenia are on ⁴⁴.

As a matter of fact, the United States of America has a great experience of receiving immigrants from all over the world. The whole history of the country was established on immigration flows. Nowadays, USA has a versatile system of immigration regulations. Some of the USA experience could be helpful to set up an efficient system of integration of immigrants in the EU.

Mostly, it's worth paying attention not to illegal immigration regulations, but the opposite, how different kinds of individuals could get legal status in USA.

The Federal law of USA divides all individuals within the US and its territories into two groups: citizens and non citizens. Citizens becomes acquired (at birth): birth in the U.S. or parent or parents of a child are US citizens upon birth.

Derived (at some point): parent or parents naturalize prior to the 18th birthday of a child. Naturalized: a voluntary process, not everyone is eligible. A Lawful Permanent Resident can file after 5 years, generally. They must be 18 and meet requirements.

¹⁰³ <http://www.mipex.eu/usa> (date: 17.12.2016)

Non citizens are anyone who is not a citizen, including:

1. Undocumented (illegal immigrants/aliens) who are unlawful entrants, visa overstays

2. Non-immigrants: those with temporary status for example students, tourists, parolees, some employment based, fiancée's T and U -visa holders, temporary protective status (TPS) and others.

3. Immigrants with lawful permanent residence in the U.S. ("Green card" holders)

U.S. Immigration policy is mainly based on three things:

1. Family (65%) immigrants applying based on close family relationship

2. Individuals who seeking freedom (16%): asylum seekers in U.S.; refugee (outside of U.S.)

3. Work (13%) immigrants invited by U.S. employers to fill positions where there is a shortage¹⁰⁴

Refugees/asylum seekers: people outside their countries of origin, who is unable/unwilling to return there because of a well-founded fear of persecution on account of race, religion, national origin, social group or political opinion

A Refugee is outside the US, whose category is determined by US government.

An Asylum Seeker is inside the US requesting asylee status. That type of individual must apply within one year of arrival.

There are also Special Provisions for (1) Battered spouse, child, parent of US Citizen or legal permanent resident (VAWA); (2) Crime victims (U-visa); (3) Victims of trafficking (T-visa); (4) Juveniles (SIJS)

Temporary Protected Status (TPS): A person may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the

¹⁰⁴ Office of Immigration Statistic, 2011 Immigration Yearbook

country is unable to handle the return of its nationals adequately. In that case, the person should apply to the Secretary of Homeland Security¹⁰⁵

For example, it includes certain criminal convictions, immigration fraud or false claims to US citizenship, unlawful entry, deportation or other violations and many more.

Naturalization procedure also works quite well in the USA. Legal permanent resident (LPR) can file for naturalization 5 years after receiving LPR. Some exceptions provide for 3 years of LPR. For example, if an immigrant married a US citizen. Applying for citizenship is voluntary, not mandatory. There are some advantages for the US citizens because it eliminates risk of deportation. Also minor LPR children who are under 18 can derive USA citizenship automatically, faster and more petitions for family members, extended travel or residency abroad is not an issue, as well as the right to vote.

For the immigrants there are also some disadvantages of getting citizenship. For instance, it's the possibility of loss of rights in the country of origin (to vote, property ownership, employment authorization), for the citizenship application, a person must establish good moral character over a minimum of 5 years, must take an English test, as well as tests on civics and the history of the U.S. (exceptions may apply if a person has a mental disorder and it doesn't let him learn languages). All those risks are also true for any EU legislation.

Deportation is an opposite side of the process of welcoming immigrants. Deportation (now called "removal") is the process of removing someone from the country of residency and sending them back to the country they were born in.

By US law, almost every resident who did not become a citizen can be deported under certain conditions. For example, any undocumented person, of any age, living or working in the country can be deported. Also, a person that entered the US legally but overstayed or violated the terms of a visa can be deported.

¹⁰⁵ <https://www.dhs.gov/> (date: 03.12.2016)

However, what many specialists may not realize is that any legal, non-citizen can be deported as well.

A person can be deported even if a person is a Lawful Permanent Resident despite living a long time or almost all their life or only speaking English language and not a language of their homeland or there is no friend and family in their home country even if there is a war in a home country. According to statistics, the number of deported people increased in a record-breaking way since 2002. In 2002 about 120.000 were deported but in 2010, 400.000 were deported.

If the person is under the deportation case, the removal proceedings start. Larger numbers of immigrants are subject to detention after apprehension by immigration.

Also, there is no right for government appointed counsel. In fact, 50% of non-detained and 84% of detained immigrants have no counsel (lawyer). At the same time, in a Cortes there always should be an interpreter if needed.

There are quite limited forms of relief from removal: US Citizenship, Family petitions, Asylum, withholding, torture (CAT), cancelation of removal. Cancelation of removal is a procedure for immigrants who are under a deportation case but they have a child or parent or spouse who is a citizen of the US or a permanent resident and who has a severe health issue or depression or any other condition that makes him/her suffer a lot.

For example, there were cases when after some investigation it appears a person who was under the removal procedure is a citizen. They got citizenship automatically, but just didn't know it. For instance, when parents of the person got the citizenship and the person was under 18 years old. In this case, the young person gets citizenship automatically.

Deportation of the children has some special moments. For non-citizen children deportation applies equally. Deported children are sent to The Office of Refugee Resettlement (ORR).¹⁰⁶ Some kids could be released to their families

¹⁰⁶ <https://www.acf.hhs.gov/orr> (date: 03.12.2016)

while still being in a proceeding. U.S. Immigration and Customs Enforcement (ICE)¹⁰⁷ has an obligation to arrange the relocation on same flight. In some cases leave them in US. Somehow to have a children citizen of US doesn't help in most of the cases for his parents to stay in a country. Child who is citizen does not become an anchor automatically.

The US Government agencies involved in immigration are:

Department of Homeland Security has under it US citizenship and immigration service (USCIS),¹⁰⁸ which deal with Green Cards, U.S. Customs and Border Protection (CBP),¹⁰⁹ inspecting visas in airport and border patrol, US Immigration and Customs Enforcement (ICE).¹¹⁰

Under the *Department of Justice* there are Immigration Courts and the Board of Immigration Appeals.¹¹¹

The *Department of State*¹¹² is processing visas and refugees from abroad.

It's important to point out that there are special provisions for vulnerable populations as a Violence Against Women Act (VAWA)¹¹³.

The Act was created by Congress 1994, and revised in 2005. The Congress of US recognizes the power of immigration status in domestic violence. VAWA takes away the power of the abusive spouse by allowing an abused spouse, parent or child to file an immigration petition on their own behalf. By VAWA there are some requirements. Self-petitioners must be the spouse or child or parent of a citizen or lawful permanent resident, have married in a good faith, shown battery or extreme cruelty to self or child, shown good moral character. Self petitions follow the general rules of family petitions.

¹⁰⁷ <https://www.ice.gov/about> (date: 03.12.2016)

¹⁰⁸ www.uscis.gov (date: 03.12.2016)

¹⁰⁹ <https://www.cbp.gov/> (date: 03.12.2016)

¹¹⁰ <https://www.ice.gov/> (date: 03.12.2016)

¹¹¹ <https://www.justice.gov/eoir/board-of-immigration-appeals> (date: 03.12.2016)

¹¹² www.state.gov (date: 03.12.2016)

¹¹³ The full text document -

https://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf (date: 03.12.2016)

VAWA benefits are: deferred action status, work authorization, certain public benefits and lawful permanent residency.

There are different types of visas which could help immigrants to adapt in the US: (1) U-Visas: victims of violent crimes visas; (2) T-visas: victims of trafficking visas; (3) Special immigrant Juvenile Status (SIJS)¹¹⁴.

U-visits was established by U.S. Congress with the intent to strengthen the ability of law enforcement to detect, investigate and prosecute certain violent crimes, to facilitate the reporting of crimes by victims who are not in lawful immigration status and to provide humanitarian relief to crime victims and their family members.

This is legislative gap in us immigration law and nowadays immigrants is more and more aware of benefits from it. This law was passed to encourage immigrants to cooperate with police without fear of deportation.

Qualifying U-visa crimes are murder, manslaughter, felonious assault, rape, torture, incest, domestic violence, sexual assault, prostitution, female genital mutilation, perjury, slave trade, trafficking, involuntary servitude, being a hostage, kidnapping, abduction, peonage, false imprisonment, witness tampering, obstruction of justice or substantially similar crimes or attempted crimes, conspiracy or solicitation to commit any of the above crime.

They have to show they suffered substantial harm which means by law, the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity. Also, the alien (in case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning the criminal activity.

According to law the alien (in case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful or is likely to be helpful to federal, state or local authorities in the investigation or prosecution of the crime. At the same time, the criminal activity violated laws of

¹¹⁴ <https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status> (date: 05.12.2016)

the US or occurred in the US. An interesting detail is even if a crime against an immigrant was committed many years ago it still counts. Applicants can be direct or indirect victims. Indirect for example could be a parent of the child who been a victim of sexual abuse. Parents also suffered substantial mental harm. This is a requirement condition in this case. Even if a child is a US citizen in this situation, parents could apply for U-visa.

Cooperation with police should be certified by federal, state or local law enforcement agencies or other agencies that have criminal investigative jurisdiction in their respective areas of expertise, such as child protection services, the Equal opportunity commission, the Department of Labour. The main problem is that for agencies, there is no obligation to sign such documents even if federal law says it should. If they don't sign it, there is no way to apply for a U visa.

Nowadays, in the US, 10.000 U visas are granted per year (not including derivatives). A U visa gives legal status for four years and employment authorization incident to status. Law allows for application of permanent residency after 3 years of valid U visa status. At the same time, for the U visa holders, there is no access to federal public benefits as under VAWA but some state benefits may be available. A person could include spouses and children into the application.

Victims who are partially culpable for the qualifying criminal activity cannot apply. Perpetrators of the crime cannot be included as derivatives.

In theory, the system of immigration policy in the US looks very logical. The problem is how it works in reality.

USA creates the politics of immigration policies that the EU uses as an example for their own regulations. Though it is far from ideal.

One of the ideas of the USA to solve some of the illegal immigration problems is to create a wall on the border. This idea is still under consideration, even a lot of experts are talking about its absolute ineffectiveness.

The wall would cost 15-25 billions of dollars and maintenance expenses are not included. Meanwhile, according to statistical data, 40-60% of immigrants arrive by plane with a legal visa but overstate it and become illegal immigrants.¹¹⁵

More than that, borders make an immigrant's issue even worse because it ruins the "circular flow" of immigrants. Some of the immigrants have an idea to work for some time in labour attractive countries (USA, EU) and in a certain moment they are willing to get back to the motherland. The border barriers such as walls do not let immigrants get back to their homes and literally make them illegal even then their status before was in the frame of the law. That happens for example when the President George W. Bush administration issued an order to stop the "circular flow" with extra detections on a borders.¹¹⁶ As a result, a lot of people just decided stay into the USA because circulations become impossible anymore.

The whole idea of the wall is misguided. Talking about Mexico, its economy going pretty well right now and people are not motivated to move into USA. Border control apprehensions are decreasing: 1.692.544 in 1986, 1.676.438 in 2000 and 337.117 in 2015.¹¹⁷ But restrictions on a border control force a lot of Mexicans to stay in the USA instead.

We can remember in the recent past that Hungary also created a wall to prevent illegal immigration. The Hungarian border barrier is a border barrier that was built by Hungary in 2015 on its border with Serbia and Croatia. The fence was constructed during the European migrant crisis (see timeline), with the aim to ensure border security by preventing immigrants from entering illegally, and enabling the option to enter through official checkpoints and claim asylum in Hungary in accordance with international and European law.¹¹⁸ The number of illegal entries to Hungary declined greatly after the barrier was finished. The

¹¹⁵ Politifact, September 8, 2015 USA

¹¹⁶ Douglas S. Massey International migration in theory and practice (Princeton University)

¹¹⁷ U.S. Border Patrol, 2015

¹¹⁸ "Hungary Plans Security Fence on Serbia Border to Keep Out Migrants". Wall Street Journal. Retrieved 18 August 2015.

border between Hungary and Serbia is 175 kilometers long.¹¹⁹ In June 2015 the Hungarian cabinet approved construction of a 4 meters high barrier.

Construction of the barrier began in early July. As of early August, Hungary was on track to complete the fence by the end of the year. The fence, which features concertina wire, is being built by contractors and a deployment of 900 soldiers at a cost of 30 billion forints (\$106 million) for the 4-meter fence and the construction of two camps to house asylum applicants.

In the US and EU, most governments should pay attention not to how to prevent but how to adopt and legalize immigrants who are willing for that because in most of the cases immigrants could be considered as a productive human resource. 1 out of 30 people in the USA are illegal already but including productively into the normal life.

Another ineffective technology for solving immigration problems, which the USA translates now is deportation. But there is an absolutely inability to organize proper work of US Immigration Courts.

That sounds a bit shocking but the dysfunction of Immigration Court System in the USA that caused the deportation of a lot of people who not only had a legal permit to stay but a lot of citizens of the USA, who simply had an African or Latin American genotype.

The USA spends a lot of its budget on immigration policies but only 2% of it goes to the Immigration Court System. The proper rule in the US is that a judge of the Immigration Court could be fired if it does not work fast enough. That makes judges overworked and stressed because there are just 57 Immigration Courts across the USA. Just for comparison, there are 40 times more mobile stores in USA.¹²⁰

¹¹⁹ "Hungary sends police to deter migrants on Serbia border". BBC. 18 August 2015. (17 June 2015).

¹²⁰ "And there are way more people with immigration problems than people who need blackberry holsters. Immigration courts currently have an insane backlog of 489,000 cases."

"Immigration Court Backlog Tool." TRAC: Transactional Records Access Clearinghouse. Syracuse University, 2016. Web.

This system is so underfunded. There are only 250 judges in the entire country! Each judge handles 1,500 cases a year! That's over three times as many as regular judges.¹²¹

In US Immigration Courts in most of the cases interpreters are allowed only by phone and some of the court hearings are maintained by Skype.

In country which represents itself as an ideal of the democracy has a immigration courts where they don't provide lawyers. Not even to unaccompanied minors.¹²²

In fact, in 2009, it was a shocking incident with a man named Mark Lyttle. He was a U.S. citizen with mental disabilities who was deported in what's called a "mass removal". Then the judge asked to rise up hand who is not agree with deportation but he simply couldn't do it so he was deported to Mexico. But then Mexican officers didn't find his documents' so he was deported to Guatemala.¹²³

Now in the 21 century, USA constantly deports its own citizens through a terrifying number of miscarriages of justice. 20.000 USA citizens were detained or deported since 2003 because of the Immigration Courts system.¹²⁴

Undocumented immigrants are an integral part of making any society function if government manages to develop effective policies.

¹²¹ Saslow, Eli. "In a crowded immigration court, seven minutes to decide a family's future." Washington Post. Nash Holdings LLC, 2 Feb. 2014. Web.

¹²² Nzelibe, Uzoamaka Emeka. "Why are these children representing themselves in court?" Reuters. Thomson Reuters, 14 Jan. 2016. Web.

¹²³ Finnegan, William. "The Deportation Machine." New Yorker. Conde Nast, 29 Apr. 2013. Web.

¹²⁴ Jacqueline Stevens. Citizenship to Go (op-ed for the New York Times, May 18, 2012)

§ 3. Methodologies of Problem-Solving Approach to Immigration

A lot of researchers pay attention to methodological questions of solving migration problem. Meanwhile, it's also important to look into the work of certain EU agencies from an ethical perspective and analyze what is happening in that sphere.

There were a lot of international conferences on immigration issues in the EU. Policymakers and bureaucrats and even some academics took part in them and even some academics. Though for most of the academics this is also a big amount of money so some specialists couldn't afford it. But most significantly, the cost of participants of these conferences must seem astronomical to an educated but relatively poor immigrant. The voice of immigrants couldn't be heard in the discussion about solving their problems. That sounds quite absurd but this is the reality we have now.

For example, let's analyze some of the true immigrant's stories which give us a key to see some of the problems in immigration regulation. In fact, in conferences we mentioned there was not even a single representative of immigrants. That leads us to the conclusion that in our society immigrants still go unheard.

The biggest problem we have is that different people such as migrants and migration officials and academics etc. get systematically disconnected even when they are in each other's presence. They're all related in the same broader process of migration.

The picture we have now is of disconnected elements of systems. There is a big need for a reformation of the apparatus. The elements of immigration policy systems should be able to communicate properly. That is true for the EU, this is true for Russia and for any other country who wants to build an efficient immigration policy.

In his article Gregory Feldman,¹²⁵ telling a story of illegal immigrant Billy from Senegal, who decided to move to Europe for a better life and earn some money to help his family. The author describes Billy's entire journey to show us which elements of immigration system work properly and which are totally broken.

So we can see his journey through African countries first, where assistance of moving into the EU, is a big illegal business. And then Dr. Feldman describes the border crossing of the EU and then how the all EU immigration authorities operate.

With an example of a true story, we can see the flaws of the European Union's immigration system.

One of the agencies involved in immigration regulation is FRONTEX, which was mentioned before in this thesis. FRONTEX intern requested that the European Space Agency refocused satellites over Northwest Africa as a measure of solving immigration problems.

Actually, they had little problem with regards to their technological capacity to do so. The Cold War infrastructure is still could be used. Illegal immigrants now becomes as a the Cold War goals for the EU. One ex-EU official explained: "If you look at it from the system's perspective it's the same thing. The satellite military system doesn't mind if it is a migrant or MIG (Russian fighter jet) or terrorist"

That sounds scary even from the perspective of basic human rights, but this is the reality we have.

As such, FRONTEX will be prepared to truck out immigrants from their journey and rapidly respond once they are into the Mediterranean Sea.

The activities of FRONTEX also include cooperation with police of third (non-EU) countries, for example in Africa. FRONTEX grants to Algerians

¹²⁵ Gregory Feldman. *The Migration Apparatus. Security, Labour, and Policymaking in the European Union*, 2011

Moroccons and others, police shipment for night vision with hit sensors and infrared cameras etc.

FRONTEX agreed to provide this equipment to the Algerians and other Interior Ministries in exchange for greater cooperation. Mostly for helping with collaboration to get illegal immigrants to return home. This is actually one of the EU's biggest headaches not detention but source countries won't take people back.

A senior official of FRONTEX explains: "Just not every country in the EU neighborhood (which means countries on EU external borders) has an unacceptable human rights record, but with these agreements we can bring them into the fold. We don't want to marginalize them as this will guarantee human rights violations".

On their journeys, illegal immigrants meet a lot of difficulties. Some of them related to the EU security system. Advanced satellite surveillance provided by the European Maritime Security Services (MARISS),¹²⁶ which is a division of the European Space Agency. Literally, MARISS can see migration. It fixes the infrastructure changes related to illegal trafficking such as boat building facilities, new mustering embarkation facilities, storage facilities or a buildup of people and sensitive areas close to the coast for the EU borders. Satellites can basically identify population concentrations at any given location. They can run that information through series algorithms to determine the likelihood of the affordable point of illegal entry. They can run this data through the whole analysis by FRONTEX.

The other tricky thing is that if a security patrol discovered illegal immigrants in a boat, a lot of illegal immigrants decided to jump into the sea. This obliges the patrol to rescue them as a humanitarian measure under international law. If the

¹²⁶ The MARitime Security Service project (MARISS) is a Global Monitoring for Environment and Security (GMES) Service Element (GSE) initiative, which responds to one of the consolidated needs of GSE: Maritime Security. The project, which is supported by the European Space Agency, is the result of European concern over the illegal marine trafficking.

rescue occurs in national waters, the immigrant has the right to broker an asylum in the country.

Then police is rescue immigrants. Here starts detention. It's a moment then to everyone should be given statuses such as asylum seeker illegal immigrant criminal ect. Immigrant from Rwanda and Senegalese for example would have different rights in EU. The goal of the police in that situation is also to see if they really could have been subject to political persecution as defined under the Geneva Convention.¹²⁷

The police officers who make decisions on the destiny of immigrants have a lot of legal criteria, however judicators explain that in some situations "sometimes people really make a specific impression on you, sometimes the stories get really personal it makes you wonder". Some immigrants were given a residency permit due to personal choice.

Many European migration officials argue that the Geneva Convention on refuge no longer works. They content that rather than protect genuine victims of political persecution it now protects economic migrants who abuse the generosity of the refugee system.

By law if for example Spain gives refugee status but a person moves to another EU county, where the immigrant becomes illegal once he/she exited Spain. Because another EU country didn't give him/her refugee status.

Most refugees ended up living in very bad conditions, like living with 15 other migrants in the filthy crawl space of a single room flat.

It is a very common story for biometric work permits to be sold and bought on a black market for immigrants. That gives the illegal immigrants the ability to work for money which they send to their family through money transfer systems like Western Union. Those companies make a lot of money through this.

¹²⁷ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949

Sometimes through a police check, *work permits* run through the Visa Information System (VIS).¹²⁸ Which is an EU database of information pertaining to visas it has awarded. Police officers, border guards, immigration officials, security officials, vehicle registration authorities, judicial authorities and customs officials have an astonishing 125,000 access points to that system.

The work permit card has a chip which stores all biometric information of the person. If a person does not use their own card, it could be discovered.

Biometrics have shifted the emphasis from Habeas Corpus to the Habeas Cognos. Your existence used to be proved because you had a body¹²⁹ but today you only exist if you have information about your body.

Illegal immigrants who were captured by the police are sent to the detention centers and then deported. Lots of different officials are included in the work with illegal immigrants. They are European commission officials and others. These individuals are not racist or xenophobes or new nationalists. Instead they believe in such values as freedom, dignity, happiness, opportunity for everyone etc. Yet it can be difficult to force these abstract values to fall in line with the immediate needs of illegal immigrants and it is rather awkward to hear EC officials try to do so.

Dr. Frank Paul who was Head of the Unit “Large-scale IT systems”, Directorate-General Justice, Freedom and Security, European Commission in the past.¹³⁰ He said: “You all have seen those terrible pictures of people drowning in the Mediterranean trying to reach Lampedusa and then in the Atlantic as well as in the Canary Islands etc. These are absolute tragedies. We have to do everything

¹²⁸ The Visa Information System (VIS) is a system for the exchange of visa data between Schengen States. The implementation of the VIS is a key element of the common visa policy, which together with other policies allows the European Union to establish an area of freedom, security and justice.

http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/VIS_englisch.pdf (date: 12.12.2016)

¹²⁹ “Habeas corpus” is part of a broader Latin phrase: *habeas corpus ad subiiciendum et recipiendum*. Its literal translation would be “keep the body to put it in hand (of law) and re-take it”

¹³⁰ See more at: <http://www.planetbiometrics.com/article-details/i/485/desc/dr-frank-paul/#sthash.W5t1rSzd.dpuf> (date: 12.12.2016)

to stop it and one of the ideas is the need to develop a very sophisticated Maritime Surveillance System. It will allow us not only detect those moments as early as possible but also before people actually really get into the Mediterranean. We have to have more intelligence to be aware what's going on. There are estimated 250,000 people who are hanging around in Libya, basically just waiting for passage to Europe. The more we know about their whereabouts, the more we would like to help and understand what exactly they're planning, when they are planning to go to Europe, how they will do this, when they are to embark. By doing that and having that information we would be able to intervene much earlier. We have to do it not with the idea of building an absolute fortress around Europe because this is not our intention, but it is simply to save lives and make sure that these people don't drown and to direct them towards a legal way of immigrating".

This moral argument is misleading from the perspective of solving real problems.

The purpose of those words is justified as a humanitarian measure to do patronage for individuals from themselves. Individuals who "can't make good decisions". It sounds a bit like neo-colonial logic, whereby people from non-EU countries cannot take care of themselves.

EC officials try to avoid two things. One is to portray immigrants as evil because it is not politically correct. At least not politically correct in liberal circles. On the other hand, it cannot acknowledge the structural inequalities because these could lead to a moral justification for illegal migration.

Meanwhile there is an alternative way for illegal immigrants to become legal immigrants. A lot of Africans successfully applied to Circular Migration Programs. One of them the EC negotiated with Senegal on behalf of Spain.¹³¹

This program allows for six months' seasonal employment as a planter or harvester of fruits and berries. The employee has the possibility to work again in

¹³¹ <http://www.africa-eu-partnership.org/en/areas-cooperation/migration-mobility-and-employment/mobility-and-circular-migration> (date: 14.12.2016)

the following year if she returns home prior to the end of the visa. Only women with families, preferably women from the countryside are eligible to participate in this program because they believe they all will return home to take care of their families.

The EU hopes that these types of programs will kill two birds with one stone. It should plug labour gaps. There are gaps in the labour market resulting from the aging of the EU workforce, which is often called the demographic crisis. It should cut off the economic causes of migration by supporting something called co-development.

Co-development means that the skills that migrants are receiving in the EU while they work later can be reinvested in their own country to create small businesses and agricultural enterprises or create civil society organizations.

Most officials will privately admit that “in the long term we may be desperate to get the people we need even though the public does not want Africans looking after their mothers. People want Christians, Filipinos, Brazilians etc. There will be global competition for these people. On the other hand, we don't want to be seen as exploiting source countries, so we need to get our development agenda working properly. We have to go back to a partnership without it being a colonial practice. Legacy is always there hunting everyone”.¹³²

Those terms suggest a very structural view of global inequality. Simultaneous population decline in liberal economic restructuring in the northern countries has created the most low-paid jobs, as well as a number of low paid impermanent jobs and attract *southern* labours.

The field has increased. Those who cannot find their way into allocated slots in circular migration programs must try to enter illegally, which brings them into the hands of border control, biometric practices and forces them to use the services of smugglers.

¹³² Gregory Feldman “We Are All Migrants”, 2015.

The immigration regulation should be analyzed in a technical way because structures are not in the air. They are the result of daily practice. In that ways disconnected people such as migrants, sea captains, satellite operators, smugglers, crafting employees etc. indirectly relate to each other at thiy daily life.

Every illegal immigrants journey transpires through apparatus composed of certain elements such as satellite systems, detention centers, quantitative analysis and visual representation of a political space etc. The question is how the apparatus pools these elements as actors together. Michel Foucault named one thing which is “spontaneous synthesis of egoism”. In our situation we have individuals who somewhere and somehow went together into a broader process.

There are three modes.

The first is when apparatus interacts with people. It integrates into their daily routine's because it is easy to use templates. We see how i-MAP¹³³ provides a visual language to standardize a policy outlook drown people into constant improvement. The procedure is very easy. Download, click on the icon and find the relevant information.

Technicians easily upload information into the system. Academics double-check its accuracy and web-designers simplify the cartoonlike visual interface. Geographically disconnected officials easily relate to each other through a shared representation of a migration journey.

There is no need for physical proximity. IT system spreads the word with much greater efficiency in distance. The tool does not solve your immediate problem. But it standardizes a perspective on problem of identification and policy conceptualization among disconnected actors. There are tools to get people to speak the same language. By giving people tools they create a sense of agency. It gives us the hope that disconnected officials won't be disconnected anymore and

133 The Interactive Map on Migration (i-Map) has served as a support instrument to intergovernmental dialogues on migration since 2006. Its objective is to facilitate access to and exchange of information through a wide range of services e.g. migration country profiles, visualisations and news. The i-map is currently being revised and a revamped version will be launched in early 2017. <http://www.imap-migration.org/> (date: 03.12.2016)

would create more efficient policy. So you get the conformity without demanding it. This is one feature of the use of templates and its kind of interactivity.

A second is hyper objectification of migrants. We had objectification for a long time, but now we have to talk about hyper objectification. It is far easier to manage people in 2-dimensional quantitative subjects rather than three-dimensional qualitative subjects or two dimensional objects rather than three-dimensional objects.

For example, biometric data in Africa through the Italian consulate transmitted to Rome stored in the database in Strasburg, backed up in Austria and instantly downloaded in Brescia. This is a kind of hyperactive hyperspeed objectivity.

The third of these constitutes different policy domains “high-scale morality”¹³⁴ or sentiments and ideas applied to large numbers of people dispersed on west geographic spaces in order to establish moral coherence among them.¹³⁵

Examples include such commonly heard phrases in EU migration policy circles as “migration policy works for everyone” or “a humanitarian approach for the border control” or “enabling migrants to help themselves”.

These vacuous phrases are becoming applicable across policy domains because they are easy to use. They required no abstract thinking which might be the scariest thing of our days. They sufficiently fade to fit any situation.

¹³⁴ High-scale morality is the study of moral ideas and sentiments deployed in relations that encompass multiple, geographically or socially distant populaces. The envisioning of distant people, their attributed moral personhood, the evaluation of their perceived behaviour, and the rectification of wrongs through the use of powerful organizations are key topics in high-scale morality. High-scale morality differs from existing anthropological approaches that emphasize local ethnography or contrastive moral ideas; it addresses the moralization of issues like world hunger, the drug trade, or international migration. The officers of the US Immigration and Naturalization Service understand and evaluate legal and illegal immigrants, as well as directly enacting moral rectification for the US polity. As they resolve moral dilemmas on their job, they utilize pervasive models for moral thought and action in capitalist, individualist, stratified, and bureaucratized societies.

¹³⁵ Respect for outsiders? respect for the law? the moral evaluation of high scale issues by US immigration officers, Josiah McC Heyman //Journal of the Royal Anthropological Institute, December 2000, Volume 6, Issue 4, Pages 577–779.

The effective courses are not to create a moral world but shut out alternative moral positions. EU officials proclaimed circular migration co-development. The problem can be represented as “We will take that one and that one but not that one”.

In reality they just want “Kleenex” workers so they can dispose of them after one use. Nevertheless, these highly skilled moralists allow the speaker (usually a liberal from the global north) to do two important things A- to feel she/he is doing the best thing for immigrants on a personal level and B -ignore the structural circumstances that caused the illegal immigrants’ journeys from the start.

So these three features: templates, hyper objectivity, the mobile moralism. Through all generic and all kind of abstract makes it easily applicable to particular situations. It makes it easily transferable across different migration policy domains. The inefficient immigration policy system works against immigrants. It did not work in a totalitarian way but rather interacted with illegals across various geographic and legal spaces.

This motive interaction substitutes for top down control and makes the apparatus difficult to resist. Resistance works best when there is a clear centralized authority against whom you can push back.

But now you only have templates, abstract logic and disposable technicians. To resist you have to fight ghosts.

In conclusion, the point of scoping out an apparatus is not to pull off a complex exegesis for its own sick but instead it's to directly answer the question of how a person is tracked, channeled and marginalizes. The most important question is what we should do now.

Immigrants’ spontaneous collaboration with other migrants along the way is moving across marginal topography. They had to think to deliberate to judge and to act in original ways. There is neither a template to orient them nor an algorithm for them. This is not a co-romanticizing remark. This is a statement of fact.

On the other hand, the apparatus from technician to sea captains to the FRONTEX officials to the policy service to academics (who can afford to take the apparatus for granted) exercise no agency.

So it's a cruel world indeed in which the most marginalized are free to exercise agency and the thrill that comes with that but have little possibility of transforming the apparatus that marginalizes them. In contrast, the technicians operating the apparatuses are systematically discouraged from agency even if they personally rebuke its negative affects.

How can we think about this irony and how the apparatuses be amended? This is sort of new territory. Illegal immigrants exemplified somewhat we can call the "vita activa" (active life).¹³⁶ It describes the 'vita activa' is transpiring "directly between men without the intermediary things or matters".

In other words, 'vita activa' transpires directly between people without intermediation. Meanwhile, the apparatus is all about intermediation. Relating to people but not connecting them and giving them a language to insert between their debate insults, which they can't redefine. The things or matter which pertains to the socially constructed artifacts that we inhabit at some point limits people's life.

The 'vita activa' demands that we see these limits and determine a course of action to decertify them. The steps required inability to judge particular situations through a process of unmediated deliberation with others.

In this effort to deliver it like that it's got me a minor gesture of sympathy but rather to exercise of the intellect and the imagination to account for the multiple standpoints of others with whom you can verse.

It sets us up to conduct a free act which would calling to existence something that did not exist before. It is not yet a part of the world. Such action cannot be determined by prescribed templates. That would be mirror behavior, not action. But rather a genuine alternative necessarily developed in collaboration. The owners here are the policy players to work with as much originality as immigrants

¹³⁶ The Human Condition, 1958, Hannah Arendt's

did. Let's bring this matter to the relationship between the policy players, the technician and the academic. The policy maker (I'm using that term very broadly to include any of the categories I mentioned) should work properly to make the apparatuses elements work in harmony.

Many of the individuals find the way to solve ethically problematic issues. In the situation the role of the academic and ethnographers as to get the policymaker the opportunity to clarify the ethical contradiction but them themselves identify and begin to contemplate what else might be done as a technical remedy at least.

The academic has or should have the ability to articulate counterintuitive perspectives on the interface between social process and public administration.

The policymaker has or should have the skill to manipulate that interface.

Then we need only recall what Margaret Mead once said "Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has".¹³⁷

¹³⁷ Margaret Caffrey, Patricia Francis. To Cherish the Life of the World: The Selected Letters of Margaret Mead. 1st edition. Basic Books, 2006-07-04. 472 c. ISBN

CHAPTER III. Statutory regulation of attraction of skilled workers from third (non-EU) countries into the European Union.

§ 1. Condition of European Union labour market.

The financial crisis affected job recruitment all over the world. The European Union is not an exception; however, the level of development in social policies of the region, the wise conduct of officials, the economic situation and other factors distinguish the EU labour market from the rest.

The 11th President of the European Commission (2004–2014) J.M. Barroso stated the opinion of the European Commission about negative consequences of the global financial and economic crisis for the European Union. As he noted in his message to the participants of the EU summit in Brussels, dedicated to the solution of social and economic problems in the global crisis conditions, the crisis destroyed lots of achievements in recruitment and competitiveness. Since December 2008, the number of unemployed people in the EU has increased by more than 7 million – to a total of 23 million people. The level of unemployment has reached 10% - the highest since the beginning of the 1990s.

Though labour markets of the EU countries suffered from the crisis, the most negative consequences were mitigated due to reasonably taken measures, such as a shorter work day and week, refusal from employees' dismissal in favor of fixed-term agreements, etc. Nevertheless, male employees, young people, unqualified workers and immigrants turned out to be the most affected groups.

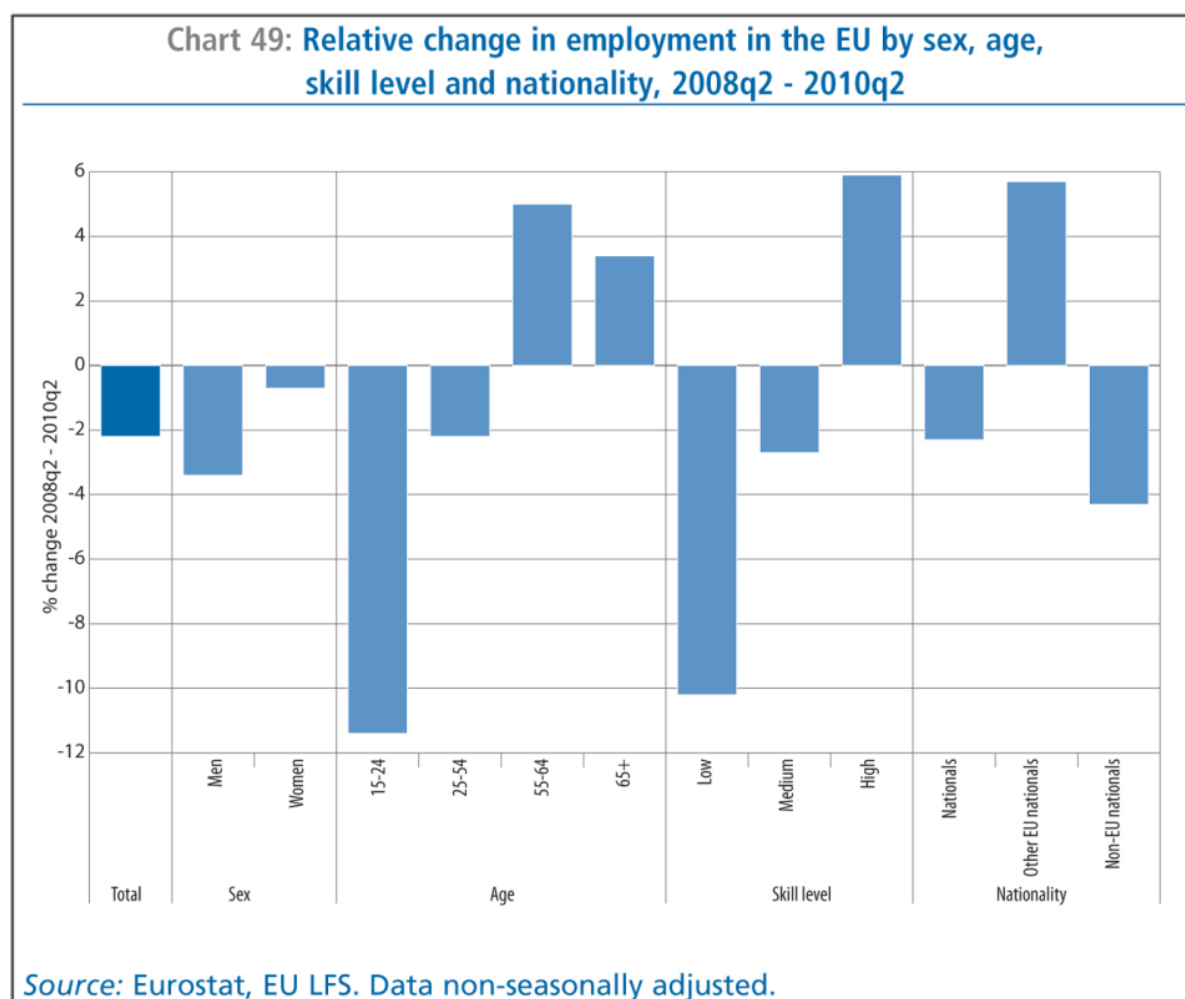


Fig. 1 Change in employment in the EU by sex, age, employees' nationality qualification level. The second quarter of 2008 – the second quarter of 2010)¹³⁸.

The crisis most clearly revealed the instability of the employee's condition depending on his/her qualification. Since the second quarter of 2008, the unemployment rate of unqualified workers has decreased by 10.2% in comparison to 2.7 % for semi-qualified workers. In contrast, the employment rate of highly qualified staff increased almost by 6%.

The European Union and its Member States promptly responded to the world financial and economic crisis by taking a number of measures. In this

¹³⁸ European Commission, Employment in Europe 2010/ Luxembourg: Publications Office of the European Union, 2010, // http://ec.europa.eu/employment_social/eie/graphs/enlarge/Chap1_Graph_49.jpg (date: 03.12.2016)

context, attention shall be paid to the document “Europe 2020: A strategy for reasonable, sustainable and inclusive growth”¹³⁹. The strategy is aimed at ensuring the recovery from the crisis, drawing on such strengths, as qualified labour force, technologies, industrial force, socially oriented market economy, democratic institutions, tradition of economic solidarity, attention to environment and cultural diversity, etc. The main objectives of the strategy are: employment, scientific research and innovation, climate change and energy, education, fight against poverty. Some of the tasks are transferred into the new Lisbon Strategy, since the crisis and other factors did not provide the EU with an opportunity for a solution by 2010. In line with this, some tasks and slogans have become already familiar, such as: 75% of the working population aged from 20 to 64 years old should be employed.

Optimistic trends shall be noted. According to the EUROSTAT¹⁴⁰ data of the third quarter of 2010, the number of employed and unemployed (taking into account seasonal fluctuations) in the EU Member States remained unchanged in comparison to the previous quarter. The absence of employment growth was recorded for the first time since the crisis began (Fig. 2).¹⁴¹

Despite that, the number of unemployed continues to grow, the total unemployment rate of the European zone in October-November of 2010 came to 10.1% (approximately 15 million people). Spain is the leader in unemployment in the EU– 20.6% (Ireland –13.9; France – 9.8; Germany – 6.7%).¹⁴²

¹³⁹ Communication from the Commission Europe 2020 A strategy for smart, sustainable and inclusive growth, Brussels, 3.3.2010/ COM(2010) 2020 final// European Union legislation official website – www.eur-lex.europa.eu. (date: 03.12.2016)

¹⁴⁰ <http://ec.europa.eu/> (date: 03.12.2016)

¹⁴¹ EU-27 employment and unemployment levels stable, Latest labour market trends: third-quarter 2010 data/ Eurostat, Statistics in Focus 8/2011// Collection is placed on the official website of European Statistics Service – Eurostat www.eurostat.ec.europa.eu.

¹⁴² European Union: Facts and comments / Edited by Y.A. Borko (IE RAS – Association of European research). M., 2011, editions 63-64, p. 24.

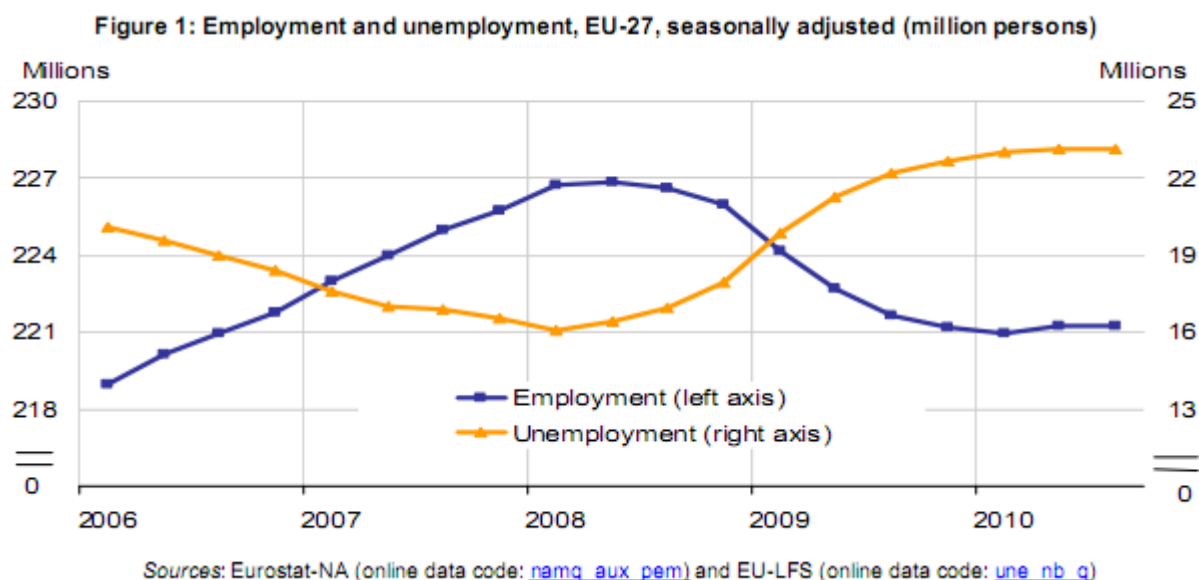


Fig. 2 Rates of employment and unemployment in the EU, temporary fluctuations (mln. people)

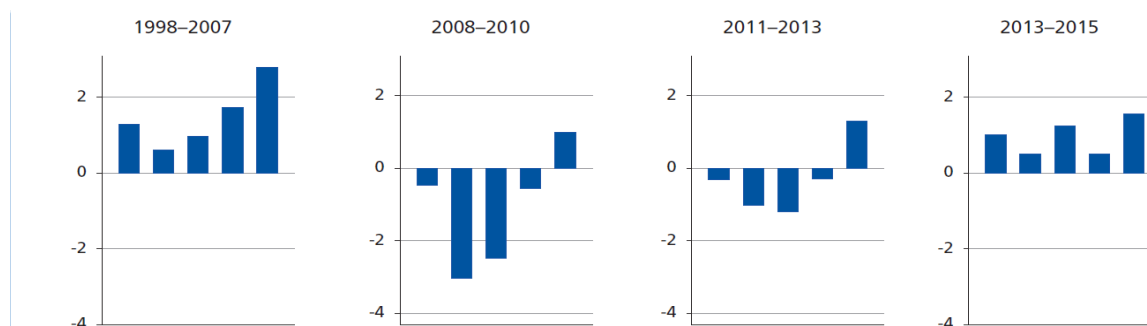
According to the European Vacancy Monitor issue dated October 2011, the demand for highly qualified specialists in the absence of matching applicants significantly increased in the first quarter of 2011. Moreover, it is also noted that the growth of the workforce demand is generally connected with the increased demand for qualified resources. What is more, the increased demand for technical professions in IT financial services rendering is observed.¹⁴³

The need for specialists with a wide range of knowledge will obviously appear. Some new job positions will require project management skills, connected with ecologically oriented economy, knowledge of high technology and materials, skills of evaluation of the new economy of environmental impact. Soon the lack of highly qualified workers will be a reality in developed countries, especially in IT and health care.

One of the reasons for the observed disparities between unemployment and lack of qualified resources is the increase of international competition and the need for social policy development and the educational system to evolve with a focus on compliance with the labour market needs.

¹⁴³ European Vacancy Monitor issue no. 4/ October 2011, p. 11, 17. Electronic information on the European Commission official website is available on the link: <http://ec.europa.eu/social/main.jsp?catId=955&langId=en> (date: 05.12.2016)

Figure 4: Employment change (percentage per annum) by job–wage quintile, EU, 1998–2015



Notes: Different EU country aggregates due to data availability as follows: EU23 (no data for Cyprus, Malta, Poland or Romania), 1998–2007, based on annual LFS data. EU28 for remaining periods, based on second quarter data in each year. Source: EU-LFS, SES (authors' calculations).

If we focus directly on the EU Member States, such conditions as the increased life expectancy of Europeans on average by 5 years for the past 50 years and the decline in birth rate (currently an average of four employees sustain one retired person, but by the middle of the century this burden will be distributed already between two employees) pose additional challenges to Europe.

Already in 2013-2014 the amount of economically active population members of the EU started to decline. According to the European Statistics Agency, the population of the EU over the next 50 years will increase by 10 million people, but at the same time the number of employable citizens will reduce by 50 million. According to statistics, already in 2015 the European Union has faced a shortage of 700 thousand professionals in the field of IT, and by 2020 an essential deficit of medical doctors will occur (2 million).¹⁴⁴

On top of this, the crisis influenced the internal migration of work forces from Eastern European countries into the central part of Europe, resulting in an intensive growth of social dumping in employment, total decline in the labour resources quality and growth of need for qualified labour.

¹⁴⁴ European Union: Facts and comments / Edited by Y.A. Borko (IE RAS – Association of European research). M., 2011, editions 63-64, p. 24.

The President of the European Health Management Association (EHMA) Armin Fidler¹⁴⁵ declared with regards to this issue, that nowadays the health care system of Great Britain provides employment to 47% of doctors immigrated from abroad, whereas for example, the share of such doctors in Poland is only 3%. According to his words, Romania annually loses more than 10% of its medical professionals, which leave to work in Western European countries.¹⁴⁶

The directions of the migration flow are quite predictable, and it seems it will not be bounded by EU territory.

Employment matters are very essential for the future economic and social prosperity of Europe. A decrease of workers in next two decades may lead to deceleration, if it is not offset by acceleration in labour productivity growth and efficiency, which means staff development.

Furthermore, a large part of the world labour potential remains unused. A solution to these problems is possible mainly by attracting qualified immigrants from non-EU countries. Highly skilled immigrants take vacancies normally not taken by local workers, and thereby increase productivity and create new jobs.¹⁴⁷

The European Union realizes that migration resources have high potential and desires to put migration under control, therefore a system of regulatory frameworks of relationships with qualified immigrants from third (non-EU) countries is being gradually built.

¹⁴⁵ <http://www.hapi.org.uk/about-us/global-council/arminfidler/>

¹⁴⁶ «By 2020 Europe may face the lack of up to two million qualified doctors», Bad-Khofgastain, Austria, 9 October. / Corr. of ITAR-TASS Yuriy Kozlov, Information in the Internet: <http://www.itar-tass.com/c95/243189.html> (date: 05.12.2016)

¹⁴⁷ Handbook on establishing of effective labour migration policies in countries of origin and destination, OSECE, IOM and ILO Geneva, 2006.

§ 2. Social rights enforcement system in the European Union.

Currently, the European countries have the most advanced social security system in the world. Foundations of this status were set in the first half of the XX century.

Human, social, economic and labour rights in the European Union differ by a high level of recognition and protection with respect to outside countries. The high quality of the regulation reveals real understanding of each individual's labour value and the importance of a high level of social protection and establishment of convenient conditions for workers.

The source of the European Union labour law is a set of rules, based on general principles and standards established by the United Nations (UN), the International Labour Organization (ILO) and the Council of Europe (CoE).

In the constitutive documents the EU countries proclaimed recognition of universal values, forming inviolable and inalienable human rights, and ratified the international and regional instruments on the rights themselves, regarding the topics under consideration: Covenant on Economic, Social and Cultural Rights dated 1966; the acts of the International Labour Organization (ILO)¹⁴⁸, e.g., the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998 and other documents. Thus, the EU states implemented international obligations to give additional guarantees of social and economic rights enforcement.

It enriches the European labour law subject as a whole, extends its boundaries and provides workers' rights with more protection by making its contents more substantial.¹⁴⁹

The legal base of the labour policy pursued by the EU, is formed by primary sources – Constitutive treaties – the Treaty, which amended Treaty on the EU (TEU) and the Treaty establishing the European Community which was transformed into the Treaty on Functioning of the European Union - TFEU,

¹⁴⁸ <http://www.ilo.org/> (date: 03.12.2016)

¹⁴⁹ Social Dimension of European Integration. M.: «Aksiom» publishment, 2010.p. 51.

enacted on December 1, 2009 (hereinafter – Reform Treaty, Lisbon Treaty, Treaties).¹⁵⁰

The Reform Treaty confirms the EU commitment to increased employment and attracts the most vulnerable population groups to the labour market, particularly immigrant workers, the need to promote social dialogue, settle gender issues and eliminate social exclusion.¹⁵¹

The TEU's new provisions as amended by the Lisbon Treaty are related to the labour law. It is worth mentioning the introduction of the "Union value" category (Article 2). This term marked the most common humane principles of the EU law in all areas, including the social one. The following categories were recognized as the EU values: human dignity, freedom, democracy, equity, law-based state, respect of human rights, including minorities' rights, pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. The Lisbon Treaty (Article 3) stipulates the following fundamental EU social objectives:

- social market economy, which "strives to achieve full employment," i.e., to the maximum reduction of unemployment;
- struggle with social marginalization and discrimination, including the environments of labour and associated relations;
- promotion of social justice and social protection;
- equality between women and men;
- reinforcement of economic, social and territorial cohesion and solidarity of the Member States.

The detailed provisions of the Union competence and activity in society and labour as well as in other areas are set forth in the constitutive document - TFEU. The first part "Principles" (section II of "General Application Provisions")

¹⁵⁰ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 // Official Journal of the European Union 2007/C 306/01.

¹⁵¹ Social Assessment of European Migration. M.: «Aksiom» publishment, 2010. p. 88.

establish contents of several "competence categories" of the Union, distinguished by correlation with the competence of the Member States.

The policy in the social sphere refers to «shared competence» of the Union and its Member States (point “b” of paragraph 2 of Article 4), meaning that the Member States are entitled to promulgate social and labour law “to the extent that the Union has not exercised its competence”.¹⁵² Here, some operating principles are described, which shall be fulfilled by the EU when implementing activities in different spheres. They include the principle of addressing the needs for promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health (Article 9).

The sections of Part 3 of the TFEU form the core of the EU competence social part. They stipulate:

- «employment policy», which is aimed to carry on coordination of activities on unemployment reduction at the Union level. (Section IX «Employment»);
- social policy of the European Union, focused on regulation of social and labour relations, including harmonization of the labour law of the EU Member States (Section X «Social policy»);
- European Social Fund legal status – one of the «structured funds», financed by the EU budget, which support social activities of the Union (Section XI «European Social Fund»).

According to the Lisbon Treaty the EU institutions devoted to social and labour administration are: The European Centre for the Development of Vocational Training (CEDEFOP), the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND), the European Training

¹⁵² Kashkin Y.S. «Development of European Union social and labour law ideas» // «Law. Journal of Higher School of Economics», 4/2009, p. 77.

¹⁵³ European Union. Fundamental acts as revised by the Lisbon Treaty with comments /Edited by Kashkin Y.S. Infra-M, M., 2008.

Foundation (ETF), the European Occupational Safety and the Safety and Health Administration (OSHA).

The revolutionary innovation of the Reform Treaty in labour regulation is the enforcement of a primary law of the Charter of Fundamental Rights dated 7 December 2000. In accordance with Article 6 of the TEU "The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union dated 7 December 2000, which shall have the same legal value as the Treaties".

Before signing of the Lisbon Treaty the text of the Charter was added by some amendments, which did not affect the contents of stipulated fundamental rights and principles. The modified Charter was adopted on 12 December 2007.¹⁵⁴ Relating to the acts, which formulate general principles of law, the Charter is not directly applicable, and i.e. its provisions operate within implementation of the EU law. There are individual exclusions for the UK and Poland from the principal of universal binding of the Charter in the Lisbon Treaty. As set forth in the Article 2 of the Protocol No. 30 to the Lisbon Treaty – On the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom: «To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognized in the law or practices of Poland or of the United Kingdom».¹⁵⁵

The rights, established by the document, are extended and added in comparison with the rights, specified in the Charter of the Fundamental Social Rights of Workers of 1989, as well as in the European Convention on Human Rights of 1950 (hereinafter ECHR). They establish a system and are presented as a wide range of human, EU citizen and worker rights.

¹⁵⁴ Charter of Fundamental Rights of the European Union (2007/C 303/01).

¹⁵⁵ Chetverikov A.O. Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United kingdom// iLawyer, July 4, 2011// Electronic version: <http://eulaw.ru/treaties/protoc/30> (date: 03.12.2011)

Ratification of the ECHR by the EU without change of the Union competence and damage to the EU law peculiarities and autonomy, stipulated by the Reform Treaty (Article 6 of the TEU), may be considered as a measure, which better ensures fulfilment of fundamental rights by the Union. Part 3 of Article 6 specifies that fundamental rights as they are guaranteed by the ECHR are included into the EU law as general principles. This fact confirms that ECHR, despite its grounds of international-law and its nature, may be directly considered as the source of the EU law.

A significant feature of the Charter is that of pointing out, that matching provisions of the Charter and the ECHR will be interpreted and implemented according to the legal practice of the European Court on Human Rights. Talking about the issue under consideration, the UN Charter on fundamental rights recognizes the status of legal labour emigrants from third (non-EU) countries close to the status of citizens of the UN Member States. Excluding fundamental political rights (right to elect and to be elected on the elections for the European Parliament, right to elect and to be elected on municipal elections) third (non-EU) countries' citizens, who lawfully reside on the territory of any Member state, may have a freedom of movement and residence; they have rights on work conditions, equal to those for the Union citizens, and they are undoubtedly provided with all fundamental human rights.¹⁵⁶

The Charter on the fundamental rights of the European Union may be considered as one of the EU fundamental acts, having supreme legal force. This fact strengthens positive social orientation of the EU primary law.

The second group of the labour law sources refers to the EU legislative acts, adopted under general or special legislative procedure. They are regulations, directives and legislative decisions. This group also includes acts of delegated

¹⁵⁶ Charter of Fundamental Rights of the European Union (2000/C 364 /01) // European Parliament official website – http://www.europarl.europa.eu/charter/pdf/t:ext_en.pdf (date: 03.12.2016)

law.¹⁵⁷ Regulation of employment issues refers to the shared competence of the EU and its Member States, that is why dissemination is not strictly regulated by directly applicable regulations, but governed by a harmonization method through adoption of directives. As a rule, directives set forth goals and results, which shall be reached by implementation of these acts. National governments are provided with the right to make independent decisions on the form of procedures and mechanisms, which will be taken to reach the goals. All gaps in directives shall be interpreted as an opportunity to specify conditions in the national law.

Many issues on labour relations are regulated by the law of the Union states, however a significant amount of questions are regulated by the secondary law of the EU. The secondary law act contain rules, composing of the foundation of the EU labour law, or directly related to it, which particularly regulate:

- application of law standards in labour relations, especially regarding prohibition of discrimination;
- general definitions of labour law;
- labour migration issues, including those regarding employees, who are citizens of third (non-EU) countries;
- labour conditions, safety and security and others.

The European Commission as well as other advisory and auxiliary bodies of the EU have conducted data research, collection and analysis on workers' conditions and employment as well as social protection of citizens. Based on the research, the Commission has suggested to the Council and to the Member States to adopt social regulations and measures, to make analytical reviews (in form of Green Papers), and to rearrange the related priorities of the EU activity (White Papers)¹⁵⁸ Programs, strategies and other acts of recommendation are not binding

¹⁵⁷ European Union law. New stage of evolution: 2009-2017 years. – M.: «Aksiom» publishment, 2009. P. 100.

¹⁵⁸ European Commission White Papers are documents containing proposals for European Union action in a specific area. In some cases, they follow on from a Green Paper published to launch a consultation process at European level. The purpose of a White Paper is to launch a debate with the public, stakeholders, the European Parliament and the Council in order to facilitate a political consensus.

for the EU states, however, such "soft laws" provide application of a flexible approach for consolidating the social side.¹⁵⁹ Along this line, one of the instruments of the Lisbon Strategy for 2000 - 2010, preceding the strategy of intelligent, sustainable and inclusive growth "Europe - 2020", was the open method of coordination, intended to create a framework of conditions for cooperation between the EU states based on assessment of activities, exchange of experiences and other matters under the Commission's supervision.¹⁶⁰

A very significant document of this «soft law» is the Charter of the Fundamental Social Rights of Workers, adopted in 1998. Chapter 1 of the Charter sets forth fundamental social rights and freedoms, provided to workers (freedom of movement, right of social protection, right of professional education and advanced training, right of equal work conditions for men and women, workers' right on information, advices and participation in corporate managing, right of providing of health and security on workplace, and others). This document marked an important stage in the creation of a range of European Union legislative acts, regulating labour relations in the EU.

Along with normative acts, significant importance in the regulation of social and labour relations in the EU is given to the judgment of the European Court of Justice, which creates the Union case law. Case laws are formed by the interpretation of the constituent documents and other sources of primary and secondary law provisions by the EU Court. By giving official interpretation, the Court not only clarifies the meaning of the rules, but often develops new principles, complementing the principles of the primary law and secondary legislation, covering the social area too. One of the outstanding examples is the principle of the EU supranational law primacy in relation to Member States national law, formulated by the Luxemburg court (Flaminio Costa v E.N.E.L.,

http://eur-lex.europa.eu/summary/glossary/white_paper.html (date: 03.12.2016)

¹⁵⁹ Labour and social law of the European Union: documents and materials. – M.: «Human rights», 2005. – p.16.

¹⁶⁰ Matthias M. Mayer. Attracting highly qualified and qualified third-country nationals Focussed Study of the German National Contact Point for the European Migration Network (EMN). Federal Office for Migration and Refugees 2013.

Case 6/64)¹⁶¹ and reminded by the Declaration № 17 to the final Act on the adoption of the Lisbon Treaty, including text from the Union legal service expertise on the EU primacy dated June 22, 2007.¹⁶²

A specific feature of the social rights in the European Union ensures recognition of international rules, their extension and impact at national level of labour relations regulation per Union Member State under a complicated system of mechanisms and instruments, which ensures a high degree of workers' basic labour rights. Such a system can successfully compete for skilled labour resources at *an* international level. Strong legal frameworks enable the European Union to gradually implement a policy of attraction of skilled workers from third (non-EU) countries.

¹⁶¹ http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61964J0006&lg=en (date: 03.12.2016)

¹⁶² Moeller-Graff, P. K. Lisbon Treaty in the system of the European Union primary law / Moeller-Graff, P. K. // Law. -2008 - № 1. - P. 83 (80 – 99)

§ 3. Legal status of qualified workers who are citizens of third (non-EU) countries in the European Union.

The desire to adequately respond to the worldwide increasing competition for professional staff, needed by the European economy and to make Europe a more attractive place to work for skilled specialists, was expressed in the creation of the corresponding communitarian legislation.

Speaking about the legal status of skilled workers, who are citizens of third countries in the European Union, it is necessary to clarify that we are talking about foreigners, i.e. citizens of non-EU countries.

The key definition of "worker" is touched upon in Regulation (EEC) № 1612/68 of the Council (October 15, 1968) *on freedom of movement for workers within the Community*.¹⁶³ The document does not provide a clear definition - according to its logic, a worker is just an employed person.

The term "worker" has been widely interpreted in the practice of the European Court of Justice. According to the Court, it must have a uniform meaning throughout the EU and not depend on the peculiarities of the labour legislation of the individual Member States.¹⁶⁴ During the interpretation of the EU primary and secondary law, the Court identified several characteristics of the status of employee:

1. Within a certain time period a person has to do work, to be directly or indirectly compensated (case C-66/85 «Lawrie-Blum» (1986);

2. A person must carry out genuine and effective activity, regardless of compensation and work conditions (Case C-53/81 «Levin» (1982)).¹⁶⁵

Thanks to such a "loyal" approach, the effect of the workers' rights and freedoms applies in particular to the inters (Case S-27/91 «Le Manoir» (1991),

¹⁶³ <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A31968R1612> (date: 04.02.2015)

¹⁶⁴ Comments to Regulation № 1612/68 A.O. Chetverikov// Information is placed on the official website of "Labour Arbitration Court for the resolution of collective disputes" Institution: <http://www.trudsud.ru/ru/docs/legislation/A16> (date: 04.02.2015)

¹⁶⁵ Introduction into the Law of the European Union./ Kalinichenko P.A., Kashkin S.Y., ./ Exmo, Moscow – 2008,- P. 354. (384)

professional athletes (Case S-61/89 "Bosman" (1990) and citizens, maintaining an actual employment relationship with their employer (without signing a formal employment contract).

The legal status of foreign workers was historically determined on the basis of bilateral treaties or conventions. Nowadays, a forward process of delegation of regulation to the supranational level is in place. Taking into account a modernized regulatory system, there are several groups of legal status workers, who are nationals of third (non-EU) countries, based on relations between the EU and individual states:

1) Iceland, Liechtenstein and Norway. Though these countries are not Union Members, their citizens are equal in their status with the EU citizens on the basis of the Agreement on the European Economic Area (EEA) 1992 ¹⁶⁶;

2) Switzerland. By virtue of the Agreement between the EU and Switzerland on free movement of persons dated 1999, Swiss citizens have the right to live and work in the EU on an equal basis with European Union citizens ¹⁶⁷;

3) Turkey. Turkish workers, who lawfully work in one of the EU countries and are duly registered, shall have the following rights:

- equal working conditions with those established for nationals of the receiving state;
- extension of validity of work permit for the same employer after a year of work (if working);
- the right to change employers and take any other job offers in the same profession after three years of employment;

¹⁶⁶ Information is available on the official website of European Free Trade Association: <http://www.efta.int/eea/eea-agreement.aspx> (date: 04.02.2015)

¹⁶⁷ In development of provisions of the mentioned Agreement the Decision of the European Parliament and the Union № 896/2006/EU dated June 14, 2006 was adopted, which establish simplified control regime of persons at the external borders based on the unilateral recognition of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory by the Member States (OJ 2006 L 167/8).

- free access to any paid work in the same EU country after four years of employment;

4) Third (non-EU) countries (Russia, Andorra, Croatia, etc.). Citizens of these countries, who work legally, have the same rights on working conditions, compensation and dismissal, as those of the citizens of the host state.¹⁶⁸

It is important to note that, due to the shared competence of the EU Member States and the EU, covering labour relations, a big range of issues are governed at national level. The so called secondary law of the EU regarding workers, who are nationals of third (non-EU) countries, covers the following areas: status of third (non-EU) countries' citizens, residing on a long-term basis, access of third (non-EU) countries citizens for education purposes, students exchange, unpaid professional development or volunteering, entrance and residence of third (non-EU) countries citizens for highly qualified work, and so on.

Special attention within the issue under consideration shall be paid to a few documents. The Directive 2003/109/EU concerning the status of third-country nationals who are long-term residents¹⁶⁹ establishes legal status of third (non-EU) country nationals.

This document aims at establishing uniform conditions of third (non-EU) country national residents in the EU. The objective of the Directive is to provide such persons in the Member State with a full range of uniform rights, approximated to that of the European Union nationals (paragraph 2 of preamble). The Directive sets forth grounds and procedure of obtaining the status of "long-term resident" by them, formalized by special permanent residency («permanent residency of a long-term EU resident»). Such status is provided under constant residence on the territory of the recent country over 5 years and with enough means of sustenance and medical insurance.

¹⁶⁸ Information of the official website of the European commission is available by link: <http://ec.europa.eu/social/main.jsp?langId=en&catId=470> (date: 04.02.2015)

¹⁶⁹ Directive of the Union 2003/109/EU "On the Status of Third-Country Nationals Residing on a Long Term basis"// OJ L 16/23.

A holder of the residence permit of an EU long-term resident is equal in rights to the citizens of the Member States in many areas of life. This status protects a person from being sent out of the country, for instance, in case of loss of employment, provides them with the right to move for permanent residence in other EU countries together with their family members, the right on work, education and more.

The aforementioned Directive also has some particularities of its operation in space. For example, its rules do not apply to three European Union countries: the UK, Ireland and Denmark.¹⁷⁰

The central document within the regulation of the legal status of skilled workers, who are nationals of third (non-EU) countries in the Union, is the Directive 2009/50/EC dated 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (hereinafter - the Directive, Blue Card Directive, Directive 2009/50/EU).¹⁷¹ The Directive was published in the "EU Official Journal" on 18 June 2009, and the countries had two years to make the appropriate amendments in the national legislation.

The present Directive was adopted to create favorable conditions in the EU for relocation, residence and employment of highly skilled labourers from countries that are not the members of the Union (including Russia).

For this purpose, building on the experience of the USA, where legal immigrants are provided with the so-called "Green Card", the Directive introduces a special residence permit of the European Union for a fixed term with the possibility of extension. It is called, respectively, the "European Blue Card"

¹⁷⁰ Translation of Chetverikov A.O.// Electronic version: <http://www.trudsud.ru/ru/docs/legislation/A11> (date: 04.02.2015)

¹⁷¹ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment// Official Journal of the European Union L 155/17, 18.6.2009.

(French.: carte bleue europeenne), or, translated from the English "EU Blue Card".¹⁷²

The European Blue Card can be received by any third (non-EU)-country nationals of "high professional qualification", namely, graduates with higher education (providing that the duration of the learning process is not less than three years), as well as other persons, with five years professional work experience in a position, requiring higher education. This flexible approach in relation to professional qualifications provides an opportunity to service a wide range of experienced professionals at a level comparable to a higher education diploma and qualification, appropriate within the profession or the sector specified in the employment contract or the job offer.

To receive the Blue Card, a third (non-EU) country citizen has to submit an application to the Blue Card International Employment Center, attaching the following documents:

- 1) a valid employment contract or qualified job offer (stipulated by national law), which shall be effective for at least 1 year in the corresponding EU Member State,
- 2) a valid trip document (ID, enabling a person to travel abroad),
- 3) an application for a visa or the visa itself (if necessary),
- 4) evidence of a residence permit or a national long-term visa,
- 5) prove that the person has subscribed, or applied for a health insurance contract, covering all risks usually covered for citizens of the corresponding Member State.¹⁷³

At the Member States discretion, a future employer of a third (non-EU) country national and/or the applicant directly may apply for the European Blue Card (Article 10 'Applications for admission'). The term of application

¹⁷² Website of MSAL (MGUA),
http://eulaw.edu.ru/documents/legislation/svob_peredv/blue_card.htm (date: 04.02.2015)

¹⁷³ Data from the official information portal Blue Card, are available by link:
<https://www.apply.eu/BlueCard/> (date: 04.02.2015)

examination shall not exceed three months, and refusal of the European Blue Card issuance can be appealed ("Procedural Safeguards" article 11).

In order to obtain the European Blue Card, citizens of a third (non-EU) country need to fulfill a range of obligations (Chapter II "Conditions of admission"). The main one is the requirement to pre-conclude a labour contract for highly qualified employment with an employer of one of the Member States, or at least receive "a firm offer" for such a job from him/her (point "a" of paragraph 1 of Article 5 "Criteria for admission").

On successful receipt of the European Blue Card, the annual nominal salary, calculated using monthly or annual compensation as specified in the employment contract of the job offer, shall not be less than a local minimum legal wage (defined for these purposes by the EU Member States) and shall equal or exceed 1.5 times the average annual compensation in the corresponding state. In certain countries, where labour shortages in certain areas are particularly strong, the minimum wage cannot be less than 1.2 times the average annual salary.

The recipient country reserves a right to refuse a person in receipt of the card, or terminate it prematurely for the following reasons:

1. for reasons of public order, public security or public health,
 2. when the European Blue Card holder does not have enough funds to finance his/her own needs and, when appropriate, the needs of his/her family members without recourse to the social assistance system of the Member State.
- The Member States shall evaluate these resources with regards to their nature and regularity and may take into account the level of the national minimum wage and the national minimum pensions, as well as the number of the concerned person's family members. This assessment is not carried out during the period of unemployment. Moreover, unemployment in itself is not a reason for withdrawal of the European Blue Card, unless it continues for more than three consecutive months or occurs more than once during the term of the EU Blue Card validity.

With regards to many laboural and social rights, the holders of the European Blue Card are equal to the European Union citizens (Article 14 "Equal Rights").

Such persons also have the same rights as the citizens of the state, that issued the card, on the following:

- working conditions, including requirements in the area of wages and dismissal as well as health and safety in the workplace,
- freedom of association, acceptance or entrance into an organization of workers or employers, or any professional organization, including benefits that can flow from that, without prejudice to national provisions in the field of public order and public security,
- education and vocational training,
- recognition of diplomas, certificates and other professional qualifications in accordance with national procedures,
- in the event of relocation to a third (non-EU) country, payments in the area of legitimate old-age pension savings at the rate, applicable under the law of a debtor Member State or the debtor Member States,
- access to goods and services and acquisition of publically offered goods and services, including procedures for acquisition of property, as well as information and consulting services, offered by employment agencies,
- free access on the Member State territory within the limits provided by the national legislation.¹⁷⁴

There is a gradual increase in the volume of the EU Blue Card holder rights. After eighteen months of legal residence in the first Member State, a person and his family members may be sent to another Member State for the purpose of highly qualified employment under certain conditions. In twenty-four months, they are entitled to have equal treatment with nationals of this country regarding access to highly skilled work (work either as an employed or as self-employed individual); and move to another Member State for the purpose of employment for highly skilled work.

¹⁷⁴ Data from official Blue Card informational portal are available on link: <https://www.apply.eu/BlueCard/> (date: 05.02.2017)

In comparison with other legal immigrants in the European Union, holders of the European Blue Card are provided with a simplified procedure for the implementation of some rights, regulated by other EU law sources. They include:

- the right to carry out "family reunion", i.e. provide relocation and joint residence of family members in the EU Member States (Directive 2003/86/EU as of 22 September 2003 on the right to family reunion and Article 15 of this Directive, "family members");

- the right to obtain the status of "EU long-term resident" after five years of legal residence, which gives third (non-EU) countries nationals more opportunities of work and residence (Directive 2003/109/EU Council as of 25 November 2003 concerning the status of third (non-EU) country nationals residing on a long-term basis, and article 16 of this Directive, "EU long-term resident status for holders of the European Blue Card").

The Directive 2009/50 /EU, as well as other EU legal acts in a similar form, serve as the basis of European Union legislation, the provisions of which are to be transformed into national law, i.e. inclusion in laws and by-laws of the Member States. The transformation term of this Directive expired on 19 June 2011 (article 23 "Transformation").

Since the aforementioned date, third (non-EU)-country nationals have acquired a right to apply for the European Blue Card in all EU Member States except the UK, Denmark and Ireland. Exemptions in relation to the UK and Ireland in relation to the so-called space of security and legitimacy freedom (justice)¹⁷⁵ are specified in the Schengen Protocol of 1997 and the "Protocol on the application of certain aspects of Article 26 of TFEU to the United Kingdom and Ireland", which was simultaneously signed with the first one.

Constant withdrawal also refers to Denmark – the EU legislation in this field, issued after January 1, 1999, as a rule have recommendatory force for

¹⁷⁵ Biryukov, M.M. Specific features of concept of an area of freedom, security and justice under the Lisbon Treaty / M.M. Biryukov // Moscow journal of international law. – 2009. – V. 2, № 74. – P. 212–227.

Denmark. Temporary exemption is provided to the re-entering Member States of the European Union.¹⁷⁶

The Member States have already granted limits to the number of vacancies for their countries. The leaders of the limits for today are Germany - 8000, France, Spain, Czech Republic - 5000 vacancies in each country.¹⁷⁷

Simultaneously, with the development of legislation in favor of legal immigration, the balance in the EU policy was manifested in legislation tightening, which is aimed at a struggle with illegal immigration, prohibiting the employment of illegally staying third (non-EU)-country nationals in the EU, and establishing sanctions and measures which should apply to employers who hire illegal immigrants (Directive 2009/52/EU of the European Parliament and of the Council dated 18 June 2009, on the establishment of minimum standards on sanctions and measures against employers of illegally staying third (non-EU) country nationals).¹⁷⁸

The EU has developed a whole system of measures to attract skilled workers, who are nationals of third (non-EU) countries, which are not limited by the regulation of such a persons' legal status.

¹⁷⁶ Legal regime of crossing of internal and external EU Member States borders by people / A.O. Chetverikov; edited by S.Y. Kashkin. – M.: Wolters Krouver, 2010 – P. 7. (54 p.)

¹⁷⁷ Data from official Blue Card informational portal are available by link: <https://www.apply.eu/BlueCard/> (date: 02.03.2017)

¹⁷⁸ Directive 2009/52/EU of the European Parliament and the Union dated June 18, 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals// OJ 2009 L 168/24.

§ 4. Additional measures for reproduction of labour resources of the European Union

The reference point of reforms is the creation of the legal framework, however, this is only the initial element in the system of policies of skilled labour import implementation. This administrative mechanism was established to ensure the issuance and promotion of the European Blue Card. An applicant is provided with the most convenient conditions of employment, open access to detailed information about the program on a thematic website - <https://www.apply.eu/BlueCard/> (date: 02.03.2017).

Since 19 June 2011, the Blue Card International Employment Program (Blue Card, BCIEP) ¹⁷⁹ has come into force and started to work - this is a way of employment, which provides a person with an opportunity to get the desired job in the desired country.

After registration in the program, specifying data and suggestions for future work, a person becomes a member of the program. His/her data is transferred to employers and employers' representatives from the selected countries. If a candidate is suitable for the employer, the employer sends the necessary documents (for work and entry into the country) to the Blue Card International Employment Center. The Blue Card International Employment Center has the exclusive authority to issue the EU Blue Card. The Centre verifies documents and the terms of the contract, received from the employer, for compliance with the law, respect for human rights and compliance with the initial job offer. After verification, the Blue Card International Employment Center sends a Blue Card packet to the program participant. The Blue Card packet itself, apart from the European Blue Card with an individual code, contains:

- an employment contract with the employer,
- a work permit, issued by the state authorities of the state of employment,
- a job offer from the employer,

¹⁷⁹ Information about program in the Internet: <https://www.apply.eu/BlueCard/> (date: 02.03.2017)

- the employer's characteristics, drafted by the Blue Card Center security service,
- a contract with the Blue Card center on assistance in employment,
- an act of rendered services,
- a CV with the list of partner companies of the Blue Card Center, giving legal support to specialists, working in the state of employment,
- help information package: the best route from the airport to the employer's office, hotel addresses, and so on.

The holder of the Blue Card receives a number of benefits when using consulting and legal services, which are necessary for work in another country.

In addition to the employment system to attract valuable human resources and maximize the effectiveness of the implementation of the rules, it is extremely important to create a favorable social environment for the person. A comfortable environment for employees is, first of all, formed by their families. For the last twenty years, family reunion has been one of the main sources of immigration in the European Union.

The EU legal space grants a special status to the family members of foreign workers. It is defined in the Directive 2003/86/EU "On the Right to Family Reunification"¹⁸⁰, which is closely connected with the Directive 2003/109/EC "On the Status of Third Country Nationals Residing on a Long Term basis."¹⁸¹

In accordance with the preamble of the Directive 2003/86/EU "On the Right to Family Reunification" family reunion, i.e. moving and living together in the EU Member States, of immigrant family members is a necessary means of ensuring opportunities for family life. It helps to create social and cultural stability, facilitating the integration of third country nationals in the Member States, which can also contribute to economic and social cohesion, which are the

¹⁸⁰ Directive 2003/86/EU of the Union dated September 22, 2003 "On the Right to Family Reunification" (OJ 2003 L 251/12).

¹⁸¹ Directive of the Union 2003/109/EU "On the Status of Third-Country Nationals Residing on a Long Term basis"// OJ L 16/23/ <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32003L0109> (date: 02.03.2014)

fundamental objectives of the Community, declared by the Treaty. This right has been available for implementation since October 3, 2005.

According to the document, a citizen of a third (non-EU) country, who resides in the territory of a Member State at least for one year shall have the right to live in it together with his family members under 12 years old. The Directive provides a detailed interpretation of the concept of "family member". It applies to the spouses and common children, including adopted children who are unmarried and under the age of majority (12-18 years). At the same time, the Directive entitles the EU Member States to set different rules for certain groups of individuals, which include:

- relatives of the first generation;
- unmarried children, who have reached the age of majority
- unmarried spouses.

Reunification of polygamous families and children born in such families in the territory of third (non-EU) countries is forbidden, except for the minimum guarantees established by the Convention on the Rights of a Child. Only one of the spouses and children may use the right on family reunification.

To get a right on family reunification, it is very important to mandatorily respect public order and public safety. The Member States may impose other conditions within the framework of the Directive.

The integration of family members should be entitled to receive status, regardless of the status of the person, who wants to reunite the family, especially in the case of divorce and broken relationships. After no more than five years of residence in the country, family members may apply for autonomous status if family connections still exist. The protection of vulnerable categories of people who are in a particularly difficult situation in the case of "hurting" of family relations because of abusive marriages and so on is subject to special provisions. The Directive also contains rules providing penalties in the event of fraud or marriages of convenience.

According to the provisions of Article 17 of the Directive, persons residing on a long-term basis, have equal rights along with national citizens in employment conditions as employees or access to activities, not related to hired labour in relation to employment and working conditions, including conditions, layoffs and wages, social security, social assistance and social protection as defined by the national legislation.

Family members also have access to education and vocational training on the same basis as the person with whom they reunited.

Compared to other legal immigrants in the EU, the European Blue Card holders are provided with a simplified procedure for exercising their right to family reunification and the rights of such persons' family members are more developed.

In order to ensure the involvement of highly qualified workers from third (non-EU) countries, an essential element of the Directive 2009/50/EU of 25 May 2009 on the establishment of the conditions of entry and residence of third (non-EU) country nationals for the purposes of highly qualified employment are favorable conditions for family reunification and for the access of spouses to the labour market.

In accordance with Article 15 of the Directive, family members can include spouses, common minor children of the reuniting third (non-EU) country national and his/her spouse, also including children adopted by them, minors, adopted children of third (non-EU)-country national who are under his custody, and such children of his/her spouse. Thus, the provisions of Directive 2003/86/EU shall apply with the derogations laid down in the Article.

Family reunification does not depend on the requirements of reasonable prospects of obtaining permanent residence by the holder of the European Blue Card and on his/her proving of a minimum period of residence. The validity of family members' residence permits is the same as the validity of residence permits issued to the European Blue Card holder, as it may be provided based on the duration of their travel documents. What is more, the Member States do not apply

the terms of access to the labour market for such persons. For the purposes of calculating the five years of residence required to obtain an independent residence permit, it may be possible to summarize all periods of residence in different Member States.

For the implementation of the third (non-EU)-country nationals' attraction policy on a legal basis, the European Union carries out a range of actions, including integration of such persons. For example, there is a framework program "Solidarity and management of migration flows". As a part of the EU Council Decision of June 25, 2007 2007/435/ EU,¹⁸² the European integration of third (non-EU)-country nationals fund has been established, that allocated 825 million euros for the implementation of the program in the field of migration for the period until 2013. Establishment of mechanisms at the level of the Member States to ensure consistency in implementation of the policy is planned.

Settlement of immigrants' integration issues are also taken upon by the Union countries.

The EU Member States attach so much importance the necessity that during integration, immigrants learn the basic values, rules and also the language of the host state. Along these lines, the Federal Republic of Germany adopted the National Integration Plan on 12 July 2007, which included 400 measures and obligations of the parties - 150 from the Federation's side and 250 from non-governmental organizations' sides, including 50 associations of immigrants. The main fields of activity are promotion of language learning and equality of opportunities in education. Successful integration requires a secure financial basis. Therefore, the Federal Government plans to annually invest about 750 million EURO to directly facilitate the integration.¹⁸³

¹⁸² Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General program Solidarity and Management of Migration Flows// EUR-lex - 32007D0435.

¹⁸³ Bammer M. National Integration Plan – Germany's input in creation of European integration policy. P. – 3. Access to the file in the Internet: C:\Users\4988~1\AppData\Local\Temp\N10_National_integration_plan_ru-1.pdf (date: 02.03.2014)

A special focus of the Union is on “nurturing of staff”, as well as on experts who are ready to learn throughout their lives, to continue the process of vocational training and adjustment to changing conditions. The strategy of strengthening of communication between the educational services market and the labour market has a number of directions.

One of them is the International Transportability of Students and Scientists: Tempus, Erasmus Mundus, COST, EUREKA, MMNTC and others.

Tempus¹⁸⁴ is a program which primarily promotes the development of higher education systems. The program carries out two types of projects: Joint Projects (Joint projects, JP) aimed at the transfer of knowledge between the EU higher education institutions and universities in the partner countries, and where appropriate projects are realized at the institutional level; Structural measures (Structural measures, SM) aimed at support of structural reform of the higher education system. They may be aimed at the resolution of the issues, related to the process of ensuring quality, accreditation, recognition of qualifications and credit system and so on.

Erasmus Mundus¹⁸⁵ is a worldwide program of collaboration and mobility, aimed at improving European higher education quality with a budget of 1 billion EURO for 2009-2013.

The program is composed of the following activities:

- joint masters and doctorate programs, including internships - integrated courses offered by a consortium of universities from Europe and third (non-EU) countries,
- student and academic mobility between European universities and universities of third (non-EU) countries, including scholarships,

¹⁸⁴ Information about the program in the Internet:
http://eacea.ec.europa.eu/tempus/index_en.php (date: 02.03.2014)

¹⁸⁵ Information about the program in the Internet:
http://eacea.ec.europa.eu/erasmus_mundus/index_en.php (date: 02.03.2014)

- An increase of interest in European higher education all over the world (improvement of its accessibility, quality assurance, recognition of qualifications and so on).

COST¹⁸⁶ - one of the most comprehensive structures for research co-operation was created in the COST's line - nearly 30 thousand scientists and researchers from 35 COST Member States and more than 50 institutions, including Russian, are involved in work on 200 topics.

Directions of research projects are very diversified: agriculture and biotechnology, chemistry, environment, food, forestry and wood processing industry, material science, medicine and health, meteorology, physics, sociology and human sciences, information and communication technologies, urban economy. Depending on the scope and theme of the project in one of the areas within COST, funding reaches an average of 70 thousand EURO.

EUREKA¹⁸⁷ –is a European scientific cooperation agency, created in 1985 through the initiative of France and Germany. It is a branched network of market-oriented industrial research and innovation. EUREKA projects are aimed at applied research, closely connected with the market, and their results are production of new products, new technologies and services. The main distinctive feature of EUREKA is organization of work without preconceived plans or programs. Governments of partners involved in the project, independently decide to what extent they can provide financial support.

ISTC¹⁸⁸ (International Science and Technology Centre) - International Science and Technology Center (ISTC) is an intergovernmental organization established by the European Union, the US, Japan and the Russian Federation in 1992.

The objective of the organization is to help highly qualified scientists, who worked in the defense industry of the former Soviet Union, to implement their

¹⁸⁶ COST official website: <http://www.cost.esf.org/>

¹⁸⁷ EUREKA official website: <http://www.eurekanetwork.org/>

¹⁸⁸ ISTC official website: <http://www.istc.int/en/>

experience and talent in the fields of science for peaceful purposes. ISTC supports not only relevant projects but also educational programs, grants for travel, technology databases, patents and so on.

The second direction of strengthening connections between science and the labour market is the remote attraction of professionals from third (non-EU) countries for the carrying out of certain projects mainly in the private sector. A kind of "virtual intellectual immigration" in the form of direct orders (outsourcing).

A specialist may be employed in his country, making a profit for an international company. A negative result of these processes is the fact, that as a rule, intellectual property, occurring as a result of inventions, is owned by international companies.¹⁸⁹

The third direction of connection between the labour market and education shall be a steady trend of passive labour market policies cutting, in particular, reduction of unemployment benefits and the extension of active measures, especially the promotion of lifelong education for workers in the Union and the increasing of the employment systems' efficiency. The Summit, held in March 2000 in Lisbon, was a turning point in the definition of the EU policies and practices in this area. The Memorandum of the EU lifelong education states: Europe has already entered the "era of knowledge." A successful transition to an economy and society based on knowledge, should be accompanied by a process of continuous lifelong education. The European Commission and the EU Member States defined lifetime education in the framework of the European employment strategy as a comprehensive learning activity, carrying this out on an ongoing basis with the aim of improving knowledge, skills and professional competence.

The important factor, stimulating the effectiveness of the long-life education in the EU countries, is the Bologna process¹⁹⁰. Its basic idea is to ensure

¹⁸⁹ Intellectual migration from Russia: social and economic consequences and ways of approaches of regulation: Thesis work of candidate of economic sciences : 08.00.14 / Belov F.D. - Moscow, 2010. - P.- 12. (26 p.)

¹⁹⁰ Bologna process official website: <http://www.ehea.info/> / (date:05.02.2017)

the harmonization of the national higher education systems of the countries, which have signed the Bologna Declaration. Its consequence for the EU is an improvement of the attractiveness and clarity of higher education in the European Union. Harmonization is achieved by the spread of the same type of education cycles (bachelor - master), introduction of uniform or an easily measurable restated credit system, similar forms of fixation of obtained qualifications, mutual recognition of academic qualifications, developed structures for ensuring specialist training quality and so on.

The Bologna process idea was developed in the Decision № 2241/2004 / EU of the European Parliament and Council dated 15 December 2004¹⁹¹, which was introduced by so-called "Europass" - a set of documents, ensuring the transparency of qualifications in the European Union. The key task of Europass is to promote and encourage the mobility and lifelong learning of citizens of a united Europe. Europass includes five separate documents: Europass CV (Curriculum Vitae), Europass Mobility (Mobility Passport), Europass Diploma Supplement (Appendix of Europass to Diploma of higher education), Europass Certificate Supplement (Appendix of Europass to document on initial professional education) and Europass Language portfolio (Europass Language portfolio, which consists, in turn, of three parts). Documents can be used together or in any combination, including alone. Some of the above mentioned documents may be supplemented by supporting materials. All of this makes Europass a Portfolio - a portfolio of documents.¹⁹²

It is significant, that the use of Europass by the countries, which are not participants of this project, is not forbidden. Moreover, paragraph 10 of the Preamble of the Decision № 2241/2004/EU directly states, that «Citizens – residents of third (non-EU) countries are also entitled to obtain benefit from this

¹⁹¹ On a Single Community Framework for the Transparency of Qualifications and Competences (Europass): Decision No 2241/2004/EC of the European Parliament and of the Council of 15 December 2004 // Official Journal of the European Union. – 2004. – № L 390/6. – 31.12.2004

¹⁹² Europass: Tutorial guidance of collecting for graduates, students and staff of Russian educational institutions – SPb., 2006. – P. 10. (112 p.)

system in European countries», for instance, for the continuation of education, which does not always mean moving graduates to another country for permanent residence.

Aforementioned measures and programs are not an exhaustive list of instruments for reproduction of the labour force, used by the European Union. Activities complement each other, they are based on the general principles of development of policy of the third (non-EU)-country nationals' legal attraction, using the potential of skilled workers and nurturing of "euro-oriented" professionals.

Labour migration from third (non-EU) countries has long ago become an objective reality for the European Union. Initially, the legal regulation of migration was conducted at the national level. After the creation of the European Union until the transition of it to a space without internal borders, became apparent the necessity of uniting the efforts of individual EU Member States in the solution of various problems, which entails migration from third (non-EU) countries. The Treaty of Amsterdam 1997 *communitysised* the Schengen agreement and took the decision of migration issues within the competence of the communities. Since then, the European Union is trying to build its own common migration policy in its entirety. As of today, the fundamental basis of the EU's migration policy and in its contents – the basis of legal regulation of labour migration from third (non-EU) countries, is contained in the Lisbon Treaty, which entered into force on 1st December 2009, in particular in the Treaty on the European Union and the Treaty on the functioning of the European Union. Legal regulation of labour migration from third (non-EU) countries was inextricably linked with the evolution of the legal status of workers from third (non-EU) countries in European law. Important legal provisions in this regard include the Charter of fundamental rights of the EU, which the Lisbon Treaty has given legal force of the constitutive act of the European Union. Over the past few years, the legal status of legal labour migrants from third (non-EU) countries from the point of view of European law has undergone significant changes. Previously used in

the EU restrictive applying for migrants from third (non-EU) countries of the Community Social rights is now less categorical than before. The whole European Union and the EU Member States gradually began to move away from policies of "zero migration" by providing foreign workers from third (non-EU) countries more opportunities for legal access to the EU labour market and increasing their social rights at the general European level. Through the approval of some regulatory legal acts of the EU institutions, legal labour migrants in the EU, in addition to traditional indirect rights, and the rights enshrined in the international agreements of the EU with a number of third (non-EU) countries, also received a list of the direct rights that are assigned to them directly as the main carriers of these rights (without reference to the existence of family ties with citizens of the EU Member States, which is typical for indirect communitarian rights).

Specification and the actual implementation of the provisions of the founding treaties in the context of legal regulation of legal labour migration from third (non-EU) countries occurs through the adoption of non-legislative acts (in the course of judicial practice of the court of justice, by the conclusion of EU agreements and treaties with third (non-EU) countries, which regulate the cooperation on various aspects of migration). In this regard, mobile partnerships and ensuring of circular migration of third (non-EU) country nationals become of vital importance.

The analysis of numerous legal acts in the EU, devoted to the problem of legal labour migration from third (non-EU) countries, allows us to conclude that the EU law constantly reduces the national legislation of the EU Member States on this issue. However, due to the high sensitivity of this sector for the EU at present, the legal regulation of legal labour migration from third (non-EU) countries is mainly sectoral harmonization, in other words, primarily acts on specific categories of legal labour migrants and members of their families or their rights are taken.

Classification of economic migration (W. Bohning)

A. Migration for the purpose of receiving education, which means the movement with limitation of time, when citizens of one country are invited to attend for a few months or years by a state or educational institution in exchange for education, training, explore of new techniques and technologies. The goal of this type of migration is to gain experience and knowledge. This may be migration abroad for study or internship.

B. The migration of highly skilled professionals, technical professionals and managers or businessmen. Its distinctions include that this category of persons move without difficulties, as is of interest in different markets. And some states encourage this type of migration themselves.

C. Migration of workers for employment on customary fixed-term contracts. Basically, it involves spheres of unskilled or semi-skilled labour in key sectors of the economy and is divided into seasonal migration for employment and the immigration of citizens as border workers.

D. Migration with the simple goal of employment, but upon condition of residence, when host states create conditions for the attraction of foreign entrepreneurs, workers, and so on.

E. Migration associated with a particular way of life, characteristic of some ethnic groups or their traditional area of settlement beyond the state borders. An example of this type of migration may be migration of the Roma.

Researchers identify objective and subjective reasons affecting the occurrence of migration. Objective factors, in turn, are divided into three subgroups: on the possibility and extent of management: unmanaged (permanent), temporary (indirect influence) and of current management. Unmanaged factors include: geographical location, climatic conditions, man-made and natural disasters. Temporary factors involve population composition: ethnicity, gender, age, presence of industrial base, land development and level of infrastructure, social sphere. Within the subjective factors are understood personal characteristics that under the same conditions allow different people to make different decisions. Some scientists call them psychological factors. Also

ecological and psychological factors (geographical location, climatic conditions, level of medical support); Ethnopsychological (ethnic identity, national and religious stereotypes, the desire to profess the new religion, the desire for homeland, the desire of communication with relatives and friends, the desire to use their native language); politico- psychological (feeling of self-preservation, the desire to live in other political conditions); economic-psychological (satisfaction with nature of work, satisfaction with level of income); socio-psychological (desire for change of social status, educational opportunities, sense of security, sense of social protection, the possibility of conducting business activity, housing conditions, implementation of collective rights); demography-psychological (family values, the peculiarities of interaction between the sexes) factors are included. Researchers identified several waves of migration during the second half of the 20th century on the European continent. The first wave began after the Second World War and had a predominantly political nature. The second wave was in the period from 1960 to 1973, when labour from the South (Italy, Spain, Portugal, North Africa) migrated to the North. This was due to purely economic reasons, namely the income inequality of the populations of the countries of the South and the North. The third (non-EU) stage of migration to Western Europe began with the energy crisis of the mid-seventies until the late eighties. During this period, the conditions of entry to the country were tightened; the return to the homeland was encouraged. The governments of some countries even paid compensation to migrants for their return to homeland.

The policy of qualified labour resources' attraction in the EU is close to that of Russia. Similar problems in the field of demography, migration, the impact of the global economic crisis caused a need for reforms, both in Russia and in the EU. Objectives of the regulation of the previously mentioned processes are similar, however the Russian Federation has specific characteristics that affect the dynamics of legislative changes, coordination of actions of the authorities and organizations, and as a result - the ability of our country to compete in the struggle for human resources at the international level.

Chapter IV. Russia in the context of immigration policies in the European Union

§ 1. Immigration policies in the EU Member States as experience for Russia

The solution to the immigration issue, and the problem of integrating immigrants can be based on different theoretical platforms.

According to some scientists in the EU, as well as in the United States and Russia, in fact, the assimilative scenario of the adjustment of immigrants is implemented by the receiving party that "demands" the full perception of the realities of their society. At the same time, there is a point of view that there is a possibility of equal co-existence of multiple societies and cultures (alien and host)¹⁹³.

It is not necessary to consider the policy of assimilation solely from the negative side, it all depends on its character. Under the condition of reciprocity of the process of assimilation, gradualism and non-violence, and without commitment to absolute assimilation of any community, this practice can bring good results¹⁹⁴. Moreover, we cannot completely exclude this process from the life of society. Apparently, trying thus to protect all European citizens and every nationality of the EU in particular from erosion by a transcultural flows of immigrants. It appears that this will not save Europe from ethnic changes in the countries of the EU, and will only be able to delay and soften the impact of immigration.

Opponents of immigration, not without reason, insist on the threat of loss of European (as well as Russian, American) identity. Their argument at first impresses, but it soon becomes clear that it is based on emphasizing and often exaggerating the negative consequences of receiving a large number of

¹⁹³ Akobyan K. V. "The Concept of multiculturalism. Experience for Russia" // Journal "World development". Issue № 5. Russia in the world economy and international relations. Resp. edited by F. G. Vojtlovsky and A. V. Kuznetsov. M.: IMEMO RAN, 2009.

¹⁹⁴ Codagnone K. Migration policy as planning at random // Immigration policies of Western countries: Alternatives for Russia. M.: Gendalf, 2002.

immigrants. Meanwhile, it is equally important to consider its positive implications – demographic, economic and other¹⁹⁵.

Taking into consideration that the immigration policy in the EU has a fairly deep genesis, and the problems faced by countries of immigration, are generally speaking, fairly typical, the significant political experience of the European Union can serve as an example for Russia. Russia has recently become a country of immigration, and has at once become a leader in the number of immigrants in the world and ranks the second number in the world after the USA¹⁹⁶. By the start of 2010, the number of immigrants in Russia was about 12 million.

Exactly as happens in some ways in European countries, in Russia, in fact, a holistic and integrated program of regulation of migration is absent. The experience of the EU as an integrative entity is more likely to apply to other integration associations (e.g., CIS). For Russia, the more logical comparison is the perception of migration policy of any individual EU Member State.

The situation in Russia at the moment is reminiscent of the situation in Germany in the 1960s — 1970s, when immigrants came as temporary migrant workers, and remained forever, while the government did not think about the consequences and took only single, inconsistent actions. In Russia now too, mostly migrant workers come, not only from countries of the former Soviet Union, but also, for example, the Vietnamese, the Chinese, and this number constantly grows. Many migrants from neighboring countries arriving in Russia to work in recent years, belong to a generation, which was not born in the USSR, but in new independent republics. They have little or no command of the Russian language, have little in common with the modern Russian population. Increasingly important in this regard is the formation and improvement of a holistic integration policy in Russia.

¹⁹⁵ A. G. Vishnevsky. Alternative migration strategies. // "Russia in global politics". No. 6, November - December 2004.

¹⁹⁶ Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, World Population Prospects: The 2010 Revision and World Urbanization Prospects: The 2010 Revision <http://esa.un.org/unpp> (date: 13.12.2014)

As pointed out by the researchers, to date, migrant workers account for the lion's share among all migrants in the Russian Federation¹⁹⁷. The one-sided approach that once had a place in Europe: providing various social benefits to migrants in the absence of the regulation of the conditions and criteria for the entry of third (non-EU) country nationals had led to the fact that by the end of the 1980s the situation had changed and among the migrants were many unemployed, which have become a burden to the social system. That is, on the one hand, of course, becoming aware that migrants can pretend to have certain rights and guarantees. But on the other hand, the legal adoption of migrants, is necessary to implement differentiated policies, depending on the duration of their stay and economic activity (it is, of course, not about basic human rights, but about social, economic, etc.).

In the formulation of realistic geopolitical vision, clearly emerges a situation where a significant number of migrants is necessary for the EU Member States as additional manpower to replenish the demographic decline. This is evidenced by statistics.

In the first decade of the 2000s, the contribution of net migration to population growth of member countries of the EU was estimated at an average of 40-50%, and in 2006 in Austria, Greece and Spain, this figure was over 80%, in Portugal, it reached 97%, in Italy upto 99%. In Germany though, migration does not compensate for the natural decrease of the population, reimbursing it substantially.

The appearance of large numbers of migrants raises questions about a fundamental transformation of the European society. The absolute majority of European countries have exercised their historical development based on the traditional ethnic nation.

¹⁹⁷ The world 2020: The Russian and Central Eastern European perspective" // Scientific. hands. V. G. Baranovsky. M.: IMEMO RAN, 2010.

Johann Gottfried Herder (scientist, anticipated the ideas of ethnonationalism) maintained that "the most natural state therefore is also one people, with a national character of its own. This character is preserved by the thousands"¹⁹⁸.

It should not be overlooked that the European countries adopt successful experience of the United States in their immigration policies, especially regarding conferment of nationality. The main differences of the United States from the European countries are the following: The United States is dominated by a non-ethnic approach to the understanding of the nation, i.e. the nation-co-citizenship.

Immigration processes initially become an indispensable factor in the existence of the state. There is a sufficiently clear and pragmatic approach to the regulation of migration processes — that is, a migrant is considered from the point of view of the contribution he can make to the development of the American society¹⁹⁹. While encouraging tolerance of the culture and required knowledge of the English language. Features of this attitude to migration can be traced in the new concept of migration regulation in the EU. Russia also needs to approach the issue of the admission of migrants in a similarly pragmatic way.

Regulation of entry needs to be done in cooperation with countries of origin and transit of migrants, that involves, primarily the CIS countries. In this regard, a good example is the experience of the EU in co-creating a space of security and justice. Russia, as a state leader in the CIS, would contribute to the deepening of cooperation in the sphere of migration regulation in the former Soviet republics. Herewith, application of the EU experience does not mean simply the opening of internal borders in the former Soviet Union. Suffice it to recall that the States in the European Union, have not yet reached the end of the construction of common space of free movement throughout the EU. Old Member States are afraid to open their borders to citizens of new EU Member States. With respect to nationals of Bulgaria and Romania, currently there are restrictions for employment in other

¹⁹⁸ Herder, I. G. Ideas to the philosophy of history of humanity. M., 1977.

¹⁹⁹ Korobkov A.V. Migration policy of the USA: lessons for Russia // "Russia in global politics". No. 3, May - June 2008.

EU Member States. The accession of Bulgaria and Romania to the Schengen area, when these restrictions will be removed, is scheduled for March 2012.

However, as pointed out by some authors, EU measures to create a common immigration regulation would undoubtedly be useful for the Commonwealth of Independent States. Such measures can be referred to as the harmonization of national migration legislation (for example, on the question of a unified approach to the reception of refugees); the above-mentioned concept of civic citizenship; the open coordination method to improve and coordinate actions in this sphere; to adopt technical innovations used in the EU to combat illegal immigration (Schengen information system, the European fingerprint database Eurodac, the system of protection of borders FRONTEX, etc.).²⁰⁰

Of course, this does not exclude, but rather complements one of the most important areas, without which all efforts to regulate migration processes may fade away: cooperation with countries of origin, transit and destination of migrants (as it is known, Russia is a transit country for certain categories of migrants). In addition, the EU's experience must be considered due to the presence of common borders of Russia and EU countries, which inevitably means cooperation with the border countries - Finland, Baltic republics on issues of crossing the common borders.

Thus, we can say that half a century of experience of the European countries and nearly two decades of EU experience in the sphere of migration regulation can serve as a good sample of both positive and negative results for many countries and whole regions affected by the influx of immigrants. Migration is an objective process, it is impossible to stop it and extremely difficult to change. The purpose of migration policy is through regulation and control of migration to use its potential and mitigate the negative effects.

The experience of resolving this problem in the EU can serve as an example for resolving similar problems faced currently by Russia.

²⁰⁰ S. Ivanov. Labour migration: factors and alternatives // "Russia in global Affairs", № 3, May – June 2006.

§ 2 The cooperation between the European Union and the Russian Federation in the sphere of solving migration problems

The foundational document for the relationship of the European Union and Russia is the Partnership and Cooperation Agreement²⁰¹ signed on 24 June 1994 in Corfu, and entered into force on 1st December 1997 after ratification by the European Parliament and in national parliaments of the Member States of the EU.

It was concluded for the period of 10 years with subsequent annual automatic prolongation. In this regard, despite the fact that the ten-year term of the Agreement has expired, this document has legal effect.

In article 84 of Section VIII of the Agreement settles cooperation of the parties in combating illegal migration along with cooperation on prevention of economic crimes, drug trafficking, illegal transactions with various kinds of goods. Direct discussion of illegal migration issues is conducted in the framework of the EU – the Russia Permanent Partnership Council on common space of freedom, security and justice. The use of European Union cooperation in the migration regulation field shall be carried out as a "motor" for the integrated development of the common space of the EU and Russia in the Area of Freedom, Security and Justice.

In this case, the European side refers to those existing problems in the Russian Federation as the unreliability of issued passports and issue to citizens electronically-readable documents as a single sample.

The entry biometric data in passports will not only cardinally contribute to the security of documents but it is also an effective tool for international cooperation in the fight against illegal migration, organized crime, terrorism and to prevent the use of stolen documents. When issuing passports, there is a necessity for the general control and management of the personalization process.

²⁰¹ The Partnership and Cooperation Agreement establishing partnership between the Russian Federation, on the one hand, and the European communities and their Member States, on the other hand, dated 24 June 1994

With the support of the EU and Russia continuing the work on creation of the unified information system of accounting of issued, lost and invalid passports²⁰².

Russia is on the list of the largest sources of illegal immigration, along with Iraq, India, Turkey, Afghanistan, Pakistan, China, and is also a state transit country, through which pass some of the traffic routes of illegal immigration flows – the Northern way, the Baltic way, the Eastern European way²⁰³. Taking into account the situation with the arrival of illegal immigrants from the territory of Russia, the EU took the initiative of concluding readmission agreements with the Russian side.

The readmission agreement with Russia was signed at the Russia – EU Summit in Sochi on 25th May 2006²⁰⁴. At the same time, the agreement on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation was signed²⁰⁵. These actions were the result of the implementation of the so-called "roadmap" for the formation of the common space of freedom, security and justice between Russia and the EU, an agreement on which was reached at the summit in St. Petersburg in May 2003. Thus, these are interrelated processes simplifying the regime of crossing the borders and combating illegal immigration. The Russian side originally sought to separate the two issues. The procedure for issuing short-term visas has been simplified for certain categories of Russian citizens (diplomatic persons, scientists, students). The EU's position on the reconciliation talks on the two issues has a grain of truth: the right of all citizens of any state freely to enter the territory of the EU should

²⁰² The sixth meeting of the EU – Russia Permanent Partnership Council on Common Space of Freedom, Security and Justice. // The official website of the Ministry of internal Affairs of Russia - <http://www.mvd.ru/news/11196/> (date:12.01.2016)

²⁰³ Tadas Leoncikas, Charolais, Gibas. The official report "Migration trends 2006-2008 in the countries of Söderköping process." The international organization for migration. European Commission, 2008.

²⁰⁴ The readmission agreement between the Russian Federation and the European community dated 25 May, 2006 / The Official website of the EU delegation to Russia http://ec.europa.eu/delegations/russia/index_ru.htm (date:12.01.2016)

²⁰⁵ The the agreement on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation dated 25 May, 2006 / the Official website of the EU delegation to Russia http://ec.europa.eu/delegations/russia/index_ru.htm (date:12.01.2016)

be complemented by the commitment of this state to take back its citizens residing in the EU illegally, and those that have penetrated through that country in the EU in transit. However, this document has not established visa-free border crossing towards Russia.

However, the obligation for the readmission is assigned to Russia. It contains clear procedures for both parties, establishing when and how illegal immigrants should be returned to the country from which they have arrived. A special accelerated procedure is specified for persons detained near the border crossing, providing deportation within a few days.

Significant challenges for Russia in this case are associated with the southern border of the country, from where an exceptionally large number of immigrants enter its territory. However, the Russian Federation has assumed the obligation for the adoption of persons from third (non-EU) countries and persons without citizenship. However, the postponement of the entry into force of this provision is, at least, 3 years, due to the necessity of signing agreements on readmission with countries-neighbors. Prior to the expiration of this time, the readmission is valid only in relation to citizens and persons from countries with which Russia has also signed this agreement. At the moment it is Ukraine, negotiations are also under way with Kazakhstan, Vietnam and China. During this period, Russia has the responsibility to build the necessary infrastructure: detention centers for illegal immigrants (which must comply with human rights standards) and to budget specific funds for the implementation of the deportation of individuals to third (non-EU) countries.

It is worth noting that Russia has made certain concessions to the EU. In exchange for the financial burdens for the Russian side's obligation to take back all illegal migrants, whose path to the EU began with its territory, the EU proposed an agreement, in fact, not bringing Russia to a visa-free regime. However, the EU indicates that the full and proper implementation of readmission agreements is an important component in the way of negotiations on visa-free travel.

The speeches by the French leader at the trilateral meeting of the President of France N. Sarkozy, Federal Chancellor of Germany Angela Merkel and President Dmitry Medvedev in 2010²⁰⁶ were interesting. When discussing the prospects for the abolition of the visa regime for citizens of the Russian Federation, a waiting time of 10-15 minutes was stated. Thus it would be logical to implement this step in the transition to the common economic space of the EU and Russia on the strategic objective of building which is stated. At the same time, the establishment of such an economic regime leads to the elimination of all kinds of visas. At the meeting, the issue of the consideration was only the removal of the Schengen short-term visas relating to the implementation of the movement of tourists. It seems that the facilitation of the visa regime within the framework of this narrow question of waiting 10-15 years is not justified. However, the severity of the immigration issue in France, as well as the involvement of France in a series of scandals concerning immigration incidents, may explain some of the categorical statements of the President N. Sarkozy.

On this question, there is some confusion with the Russian side. On the one hand, the President of Russia Dmitry Medvedev officially passed at the summit Russia-EU in Rostov-on-don (June 2010) the European side, the draft agreement on elimination of visa regime with the EU within the Schengen space, it is said at the same time about the need to develop the 'roadmap' for action in this direction. The adoption of the agreement would be an effective solution for the settlement of several immigration and visa related issues, and could relieve the necessity of a total revision of the Russian legislation provisions, because international agreements are the predominant legal force in the system of normative legal acts.

It is necessary to assume that with the implementation of its own actions, Russia has backed itself into a corner, because the politicization of the issue of the visa regime for tourist and business trips is not in conformity with strategic

²⁰⁶ Center for problem analysis and state governance. "Experiments of independent analytics. Brainstorming in Deauville" - http://www.rusrand.ru/pubpoll/pubpoll_302.html (date:12.12.2014)

Russian interests. Politicization was tied to the problem of citizens crossing the Russian borders of the EU when traveling to the Kaliningrad region from other Russian regions. There is a broader question of establishing a visa-free regime between Russia and the EU. The politicization of the individual segments of the visa issues (for example, the situation with tourist visas), as suggested by some analysts, is meaningless, since there is the possibility of developing such solutions whereby the implementation of the visa regime will be virtually not noticeable to individuals²⁰⁷. Many of the difficulties in this case can be lifted when using the existing framework of the simplification of border procedures. As an example, we can cite the regime for obtaining visas for 5 years proposed at the time of Spain's presidency of the European Union. The proposal contained the idea of a phased transition to issue long-term visas: applicants are provided in the first instance with the visa for six months, if the citizen fulfils the conditions of entry and exit from the EU, the next visa is granted for a period of 2 years, the subsequent one will be for 5 years²⁰⁸.

The establishment of such an initiative from the Spanish authorities, however, was implemented without complying with the procedural framework of the European decision-making mechanism, and this was due to the lack of discussion about ideas at an official level. This example is a vivid illustration of the need to navigate the procedural aspects of European politics and a clear understanding of the application of its tools. Thoughtful initiative, not being inscribed in the legal framework of the discussion is ill-failed.

On the issue of establishing a visa-free regime with Russia, the European Union Member States hold different positions. The countries of the Mediterranean region (Spain, Greece, etc.) support this initiative, realizing the positive implications for the economies of countries in connection with the strengthening

²⁰⁷ M. Entin. Liberty of mutual visits in relations between Russia and the European Union // "All Europa.ru" (№4(32), 2009) // www.alleuropa.ru

²⁰⁸ According to the press conference with the Ambassador of Spain in Russia Juan Antonio Palolem. <http://www.espana.ru/tracks/post/955/track/ispaniya-dlya-turistov/> (date: 02.03.2016)

of the competitiveness of its tourist business. However, other countries in the EU have expressed concerns about the implications of establishing a visa-free regime with Russia. It was supported by the problem of insufficient protection of the southern borders of Russia regarding the illegal crossings of persons; the threat posed by potential illegal migrants from the territory of Russia, etc.

However, such arguments seem refutable. A visa-free regime does not negate the current regime of passport control when crossing borders with the EU. The parties retain the power to prevent the access to its territory of certain individuals. The presence of the valid agreement on readmission between the EU and Russia introduces a mechanism to prevent illegal migration during visa-free border crossing.

Despite the lack of significant achievements in the field of mutual liberalization of the rights of movement of citizens between Russia and the European Union, trends and possibilities for further cooperation are available, and they should definitely be implemented.

In relation to migration the cooperation between the EU and Russia is also concerned with the protection of borders. In 2006, FRONTEX and Border guards of the Federal security service of Russia signed a working agreement about cooperation. On this basis, was developed the "Joint cooperation Plan for 2007-2010"²⁰⁹. The document provides for the exchange of information, successful experiences and development of joint educational programs, risk analysis, and in the later stages – joint operational activities²¹⁰. On the questions about limiting the flow of illegal immigration, FRONTEX cooperates with EUROPOL (European police organization). Russia became one of the first countries outside the European Union, which made a proposal on cooperation with Europol. The result was the signing, on 6 November 2003 in Rome of the cooperation

²⁰⁹ Cooperation plan between the Border Service of the Federal Security Service of the Russian Federation and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) for 2007-2010 / the Official website of the Border service of Russia www.ps.fsb.ru

²¹⁰ The European Union: facts and comments. Issue 35: Dec 2003 - Feb 2004 // www.edc-aes.ru

Agreement between the Russian Federation and the European police organization²¹¹.

Cooperation on the issue of border security also touches upon the issues of strengthening the borders of Russia with other states, including non-EU countries. Thus, the Russian authorities expressed a desire to use the most effective practices of implementation in the EU controls at borders for use on the southern borders of the country. This position is consistent with the existing EC approach on the improvement of border management in Central Asia that is connected with the penetration of illegal migrants from these regions in the EU and with the need to stop the illegal supply of drugs to the territory of the European Union.

Cooperation between Russia and the EU is, among other things, in the framework of the TACIS programme²¹². For example, the construction of Chernyshevsky border checkpoint on the Lithuanian-Russian border (€ 8 million for investment); the Polish-Russian border crossing point "Mamonovo" (€ 13 million for investment), etc. In addition, € 4 million was allocated for the organization of integration border settlement in Kaliningrad. Joint actions had been undertaken within the ENPI (European Neighborhood and Partner Ship Instrument). Thus, in the framework of the "Annual Action Programme" ENPI in 2008, Russia has been allocated € 5 million to strengthen cooperation between Russian border guards and the relevant services of the EU Member States, and the implementation of the input of experimental Integrated Border Management for checkpoints between the EU and Russia²¹³.

The European Commission is tasked with development and input to the 2010-2012 uniform mechanism for granting asylum in all Member States and the introduction of a common understanding of refugee status and the procedure for its assignment. The EU is seeking full compliance of the actions of Russia to the

²¹¹ The Russian national contact point for cooperation with Europol as a structural unit of the National Central Bureau of Interpol of the Russian Ministry of Internal Affairs was founded by Russian Ministry of Internal Affairs order No. 859 of 23 December 2004

²¹² Technical Assistance for the Commonwealth of Independent States

²¹³ Assessing the common spaces between European Union and Russia (edited by Krassimir Y. Nicolov) BESCO, Sofia, 2009.

UN Convention relating to the Status of Refugees of 1951²¹⁴. Although Russia ratified the Convention, its policy of asylum and outputs continues to be subjected to significant international criticism, indicating inadequate conditions in detention centres, the lack of provisions prohibiting forced exile, etc.

It is worth pointing out that currently, as the result of a joint undertaking, it is initiating "Partnership for modernization"²¹⁵. This initiative was announced at the summit Russia-EU held in Rostov-on-Don 31 May – 1 June 2010.

The term presupposes the establishment of relations between the two sides on all the issues at a qualitatively different level. The initiative is developing, an essential task of Russia and the EU is to identify priorities for dialogue. The development of the discussion of immigration issues within the framework of this initiative is a comprehensive approach to this area.

Thus, Russia's engaging in dialogue with the EU on immigration issues, should be based on the trends in European immigration policies. The task of the Russian side is to understand the reference points in the EU and, in view of this, to cooperate with the EU on the basis of possible mutual solutions to existing problems.

²¹⁴ The UN Convention "On the status of refugees" of 28 July 1951, / / reference legal system "Consultant".

²¹⁵ M. Entin. The partnership for modernisation is the path to the rapprochement between Russia and the European Union / "All Europa.ru" (№9(47), 2010) // <http://alleuropalux.org> (05.03.2017)

§3. Applicability of the EU immigration policy in Russia: scope and limitations

Despite some decline after the financial crisis in 2007-2008, international migration flows keep growing around the world. According to the OECD for 2013, Russia ranks second after the USA in terms of number of accommodated immigrants. Individual EU countries are also top ten states, which annually welcome the largest number of foreigners: Germany (9.8 million), the UK (7.8 million), France (7.5 million), Spain (6.5 million)²¹⁶.

In Russia, and in the countries of the European Union, immigration influences socio-economic and demographic development. In conditions of low natural increase (in 2013 in Russia the figure was more than 20 thousand people²¹⁷, in the EU in 2012 – 220 thousand people)²¹⁸, immigration in the European Union provides about 80% of the total population growth, in Russia – more than 90%²¹⁹.

Russia has relatively recently become a country of mass influx of immigrants, until the late 1980s, it almost was not affected by international migration processes. External migration into the former Soviet Union was extremely limited, and the internal movement of the population consisted of moving from one Union Republic to another, or from rural to urban areas²²⁰. The situation significantly changed in the first half of the 1990s, after the collapse of the Soviet Union, when Russia became a country of mass immigration²²¹. Only

²¹⁶ World Migration in Figures, OECD-UNDESA October 2013. <http://www.oecd.org/els/mig/World-Migration-in-Figures.pdf>. (05.03.2014)

²¹⁷ Only in 2012, for the first time since 1994, was recorded positive natural population growth in Russia.

²¹⁸ The natural increase of the population of the Russian Federation in 2013 exceeded 20 thousand people, RIA Novosti, 13.01.2014 <http://ria.ru/society/20140113/988893291.html>. (05.03.2017)

²¹⁹ Shcherbakova E. M. Russia: demographic results of 2013 (part III). http://www.perspektivy.info/rus/demo/rossija_demograficheskije_itogi_2013_goda_chast_iii_2014-06-10.htm. (05.03.2017)

²²⁰ Moskvina L. B. Potemkina O. Y. Migration processes in the CIS (development trends, problems, perspectives). Socio-political magazine. 1995. No. 1. P. 34.

²²¹ For more information: Mkrtchyan N. V. Immigration in Russia in the new century: forecasts and challenges for policy. The migration processes. Past. Present. Future. The

after two decades in Russia, an attempt was made to develop a strategy for attracting immigrants – in 2012 the State Migration Policy Concept of the Russian Federation was approved through to 2025.

The EU Member States have experience of more than half a century of mass immigration. Europe, formerly the provider of immigrants to the New World, Australia and the colonies of the European powers, in the second half of the twentieth century became one of the main centers of attraction for immigrants from around the world. The European States faced mass immigration for the first time in the 1950-1960s, which was associated with active migration processes within the continent. Workers from Spain, Greece and Italy left their homes to find work in the industrialized countries of Europe (Germany, France, Austria), and later migrant workers in the countries of the current EU were citizens of Turkey and North African countries. A significant part of the flow were also immigrants arriving into Europe from former colonies. In those years, immigration was perceived solely as a useful phenomenon for Europe, which was in dire need of a low-cost force for economic and infrastructural recovery after the Second World War. Even after several decades, it will become apparent for the European countries that the presence of immigrants has turned from a temporary phenomenon, into a constant one²²². As of 1 January 2013, i 20.4 million third (non-EU)-country nationals²²³ lived in the EU, which is more than 4 % of the total EU population.

After the oil and the ensuing economic crisis restrictions on the entry of immigrants have not led to a reduction in their numbers in European countries. Whose governments were granted the right to family reunification to all those

collection of materials of X and XI Moscow-Berlin international seminars. Ed. by Smidovich G. M., 2005. P. 135-147.

²²² Pasyakina L. S. EU: immigrants as need and problem. *Modern Europe*. 2012. No. 4 (52). P. 35.

²²³ Eurostat, Migration and migrant population statistics – Statistics explained, 17.02.2015.

http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics. (date:05.03.2017)

immigrants who arrived in their territories in the 1960s. Thus, it became apparent that the policy in the field of immigration could no longer be confined only to the issues of the safety and the supply of labour markets by foreign workers. It was necessary to introduce special legislation which could regulate such aspects as the rights and statuses of workers from third (non-EU) countries, family reunification, integration into the host society of immigrants, who often belong to a different culture and adhere to other religious beliefs, etc. Over time, the EU has developed a quite detailed legislation in the sphere of immigration regulation, which deserves attention, including from the point of view of possible applications to the Russian context. During the period 1990-2000s, the European Union has developed a number of legislative documents in the field of immigration policy.

The table identifies seven directives which form the legal base of regulation of legal immigration to the EU.

Table
Statutes and regulations of the EU in the field of legal immigration

<i>Document</i>	<i>Content</i>
Council Directive 2003 on the right to family reunification ²²⁴	provides immigrants legally residing in the EU, the right to transport family members in the host country
Council Directive 2003 concerning the status of third-country nationals who are long-term residents ²²⁵	guarantees to third-country nationals, legally residing in the territory of the EU over five years, the rights comparable with the rights of EU citizens
Council Directive 2004 concerning the immigration for the purposes of studies ²²⁶	regulates the entry of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

²²⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. OJ L 251, 3.10.2003. P. 12-18.

²²⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. OJ L 16, 23.1.2004. P. 44-53.

²²⁶ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. OJ L 375, 23.12.2004. P. 12-18.

Council Directive 2005 on a specific procedure for admitting foreign	provides a specific procedure on entry of foreign
So-called EU Blue Card Directive 2009 ²²⁸	citizens for the purposes of scientific research simplifies the procedure of entry, stay and access to the EU labour market for highly skilled foreign workers
Directive 2011 on a single permit ²²⁹	introduces a single permit for the right to live and work, and establishes a single list of rights for labour immigrants
Directive 2014 on seasonal workers ²³⁰	ensures the observance of the rights of temporary labour immigrants

Regulation of labour immigration

The very existence of statutes and regulations in the field of legal immigration shows the choice of the European Union for a sectoral approach to the admission of foreigners: highly qualified specialists, students and researchers, families, etc. The Current Russian migration legislation does not imply such a clear separation of legal approaches and procedures in respect of various categories of foreign citizens. The first step in this direction was the adoption of the amendments to the migration legislation of the Russian Federation in 2010. The main purpose of the changes was to simplify procedures for attracting highly qualified specialists, to abolish quotas for this category of immigrants, as well as give them a number of preferred rights, such as the right to family reunification. Dynamics of attraction of foreign highly skilled workers is positive: in 2013, 26

²²⁷ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. OJ L 289, 3.11.2005. P. 15-22.

²²⁸ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. OJ L 155, 18.6.2009. P. 17-29.

²²⁹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. OJ L 343, 23.12.2011. P. 1-9.

²³⁰ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers OJ L 94, 28.3.2014. P. 375-390.

thousand work permits were issued, that figure was twice as high as in the previous year²³¹.

However, it is difficult to judge how successful this innovation was. Russia's attractiveness increased, but only slightly compared to other regions of the world. The battle for «brains» is carried out not only by the United States, Australia, Canada and the EU Member States; Brazil, India and China now, with their rapidly developing economies have also joined it.

Since 2009, at the level of the European Union, the so-called Blue Card Directive has been in force, which has simplified the procedure of entry, stay and access to the EU labour market for highly qualified foreign workers. Previously, special schemes for the attraction of labour migrants of high qualification existed in some States of the European Union. In 2013, in a number of EU countries, the rate of foreign workers in sectors requiring high qualifications, was 2.08% of total employment, which means 1.6 million people²³². The EU Member States often emphasize the special economy and labour sectors of the market for the following specialisms: information technology (France, Germany, Ireland, UK, Italy, Spain), medicine (Germany, Austria, Hungary, Ireland, Poland, Slovenia, UK), engineering and machinery (Germany, Austria, Spain, Ireland). In some countries there are also special rules for foreign entrepreneurs (Estonia, Germany, Ireland, Slovakia) and investors (Estonia, Germany, Ireland, Hungary, Luxembourg), which are provided with simplified conditions of entry and stay to maximize their economic contribution to the development of the host country. Thus, as a prerequisite for investors, can be, for example, the size of the investment, for entrepreneurs – confirmation of availability of mortgage credit.

The Migration Policy Concept of the Russian Federation that runs through to 2025, also proposes to introduce a point system to attract foreign labour. The

²³¹ OECD, International Migration Outlook 2014. Paris : OECD Publishing. 2014. P. 292.

²³² Attracting Highly Qualified and Qualified Third-Country Nationals. European Migration Network Study 2013. Directorate General Home Affairs, European Commission, 2013. P. 5.

http://emn.ie/files/p_201311180323172013_attractinghq_workers_finalversion_23oct2013.pdf. (date:05.03.2014)

evaluation points system is already active and quite effective in a number of EU Member States. Followed by Australia, Canada, New Zealand, countries that traditionally and historically attracted large numbers of immigrants, including highly skilled ones are, the EU Member States, (Denmark, UK, Netherlands in 2008, Austria in 2011) who also introduced an evaluation points system for labour immigrants. The basic principle of the scoring system is the simultaneous use of several criteria for the selection of foreign workers. The principal criteria are educational level, age, professional experience and language skills. The difficulty of implementing a points system is that it requires periodic adjustment and evaluation of how the criteria eventually lead to the employment of the foreign worker in a particular occupation. Otherwise, this approach may not always provide the labour market with necessary foreign personnel. On the other hand, such a system may provide an additional incentive for potential labour immigrants to learn the host country language and increase their skills²³³.

Unconditional innovations in the Russian legislation should include the introduction of patents for labour activity for citizens from visa-free countries. On 15 January 2015, new rules came into force for issuing patents as unified document – labour patent, giving the right to conduct labour activity in the territory of Russia within no more than one year. Also introduced, was an amount of the advance payment, which depends on a region; at the federal level, the normative value of a patent is about 1.5 thousand rubles per month²³⁴. In Moscow, for example, the monthly advance payment on incomes of physical persons by the holder of the patent is 4 thousand rubles due to the increase of the coefficient reflecting the regional characteristics of the labour market in the metropolitan

²³³ For more information: OECD, International Migration Outlook 2014. Paris: OECD Publishing. 2014. P. 428.

²³⁴ The peculiarities of labour activities of foreign citizens arriving in the Russian Federation in accordance with a procedure not requiring the receipt of a visa, on the basis of a patent. http://www.fms.gov.ru/foreign_national/trud_migrant/osob_osushch_trud_deyat_inostr_grazhd. (date:05.03.2014)

area²³⁵. The first patents were introduced in 2010 and affected the labour activity of foreigners employed only by individuals. During this period, the patent system has brought to the state budget more than 31 billion rubles²³⁶. On the one hand, the patent system provides labour immigrants more independence from the employer (formerly, the employer was obliged to obtain work permits for foreign employees within annually established quotas. In addition, employers often violate labour rights of immigrants). On the other hand, this system introduces additional conditions. Since 2015, a mandatory condition for obtaining a patent was the passing of a comprehensive exam on knowledge of the Russian language, legislation and history of Russia²³⁷. In addition, measures against violators of immigration laws became tougher. It should be noted that a patent gives someone the right to work only in the federal subject where it was received.

Educational immigration

The immigration policy of the European Union, as mentioned previously, operates a sectoral approach, the order of entry and stay of immigrants in different categories is regulated by different legal documents. So, with respect to foreign students and trainees a Council Directive 2004²³⁸ is applicable.

Currently, at the level of the EU institutions there is an issue of improving Directive in order to increase the attractiveness of the EU countries for foreign students, who ultimately could remedy the lack of qualified personnel in certain economic sectors.

Namely, student immigration is considered as one of the channels for attracting highly qualified personnel given the global competition for brains. One

²³⁵ About paying of personal income tax in the form of a fixed advance payment, the site of UFMS of Russia in Moscow. http://www.fms-moscow.ru/docs/work_migration/patent-nalog.html. (date: 10.03.2015)

²³⁶ FMS: patents for migrants on work for individuals has brought the budget more than 31 billion rubles, TASS, 25.11.2014. <http://itar-tass.com/obschestvo/1601441>

²³⁷ FMS will issue labour patents to migrants from visa-free countries. RIA Novosti, 14.01.2015. <http://ria.ru/society/20150114/1042563069.html>. (date: 10.03.2015)

²³⁸ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. OJ L 375/12.

of the key items among the proposals of the European Commission was the extension of foreign students' access to the labour market, specifically, the possibility to work more than 20 hours a week. In addition, students and researchers at the expiration of their educational programs and contracts for research will have an additional 12 months to find work or open their business and, therefore, to officially change their immigration status, obtaining work permits and residence rights in the EU state without leaving the country and requiring a new visa. Another significant innovation could be the freedom of movement for foreign students on the territory of the European Union without obtaining additional permits. OECD data shows that European countries are very attractive for foreign students. In the period from 2000 to 2010, the proportion of students from third (non-EU) countries in Europe increased by 114%²³⁹. In 2012, educational immigration took third place in the overall structure of immigration flows to the EU: 32% of entry documents in the EU to the immigrants are issued due to family reunification, 23% for employment and 22% are student visas. The most attractive countries for educational migration are the UK, Germany, France, Italy and Spain²⁴⁰.

In Russia, student immigration also occupies the third place after labour immigration and the resettlement of compatriots in the migratory stream. According to UNESCO, based on the number of foreign students, Russia occupies the 7th place in the world after the US, UK, Australia, France, Germany, and Canada²⁴¹. According to the Ministry of education and science of the Russian Federation, the number of foreign students in Russian universities in the 2011/2012 academic year amounted to more than 157 thousand people, the

²³⁹ OECD, Education at a Glance 2012: OECD Indicators. OECD Publishing, 2012. P. 360. http://www.oecd.org/edu/EAG%202012_e-book_EN_200912.pdf. (date: 10.03.2015)

²⁴⁰ European Migration Network, Immigration of International Students to the EU. Directorate General Home Affairs, European Commission, 2013. P. 13.

²⁴¹ Arefyev A. L., Sheregi F. E. The Foreign students in Russian universities. Section one: Russia in the international education market. Section two: the formation of the contingent of foreign students for Russian universities [electronic resource]. The Ministry of education and science of the Russian Federation. Moscow, the Centre for Sociological Research, 2014. P. 16.

majority of which are students, about 4.6 thousand are postgraduates and 0.1 thousand – doctors of sciences²⁴². More than 59 thousand foreign full-time students are citizens of the CIS. In the 2012-2013 academic year in Russia, 172 thousand foreign students received education. For the most part there were citizens of the CIS countries (Kazakhstan, Belarus, Turkmenistan, Azerbaijan, Uzbekistan), among other third (non-EU) countries, China²⁴³ dominates. Every year, the government of Russia allocates 10 thousand state scholarships, entitling free education in Russian universities for foreign students. Almost half of the scholarships are accounted for by immigrants from the former Soviet republics, and the other half are intended for representatives of foreign countries²⁴⁴. However, in the State Migration Policy Concept of the Russian Federation through to 2025, it is still recognized that the country poorly used the potential for educational immigration²⁴⁵. In this regard, in order to create more favourable conditions for attracting foreign students, on 1 January 2014, in Russian immigration law, it was amended, that, among others, legal foreign students studying in Russian universities could have full-time work throughout the period of study²⁴⁶. In accordance with the amendments, procedures were simplified and the period of issuing work permits without regard to annually set quotas was reduced.

At the same time, the attractiveness of education in Russia is declining due to restrictions on employment after completion of study²⁴⁷. In addition, the notion

²⁴³ OECD, International Migration Outlook 2014. Paris: OECD Publishing, 2014. P. 292.

²⁴⁴ Arefiev A. L. Foreign students in Russian universities. Demoscope weekly, No. 571-572, 14-31 October 2013 // <http://demoscope.ru/weekly/2013/0571/analit02.php>.

²⁴⁵ The State Migration Policy Concept of the Russian Federation through to 2025, Art. II.

²⁴⁶ Federal Law No. 203-FZ dated 23 July 2013 “On Amendments to the Federal Law ‘On Legal Status of Foreign Citizens in the Russian Federation’” and certain legislative acts of the Russian Federation in order to create additional favorable conditions for foreign citizens and individuals without citizenship for learning in the Russian Federation, came into force on January 1, 2014.

²⁴⁷ The order of entry and conditions of participation of foreign students in labour relations determines Federal law "On Legal Status of Foreign Citizens in the Russian Federation".

of educational migration is not codified. The difficulty lies in the fact that changes of previously obtained legal status, defined by the purpose of stay of foreign citizens in Russia (for example, from study to work), are extremely difficult, without obligatory departure from the country²⁴⁸. Perhaps the solution could be the adoption in Russia of norms governing educational migration, the creation of a special light migration regime for foreign students, which would provide, among other things, the right to their future employment. The authors of the Concept recognise that academic immigration is a source of qualified and integrated foreign citizens in the country. Indeed, foreign students learn not only the language, but also create social ties in the host country, which subsequently contribute to furthering their integration.

As rightly noted by the authors of "Strategy 2020: New growth model – new social policy", the migration policy of Russia in a large measure will be determined by the chosen direction of economic development: raw materials, industrial or innovative²⁴⁹. In the case of development of the Russian economy a major role will be played by temporary labour immigration of low skilled workers. Currently, immigration to Russia is mainly temporary in nature: in 2011, in Russia moved 2.1 million temporary immigrants, in 2012 – 2.7 million, in 2013 – 2.9 million²⁵⁰.

In accordance with the second path of development, namely the increase in manufacturing and technology industries, aimed at import substitution, in addition to the employees with basic qualifications, Russia will firstly need highly qualified workers and specialists with above average qualifications. In this case, priority is long-term or permanent immigration.

²⁴⁸ Strategy 2020: New growth model – new social policy. Final report on the results of expert work on topical issues of socioeconomic strategy of Russia for the period up to 2020 Book 1; under scientific editorship of. Mau V. A, Kuzminov Ya. I. Moscow, publishing house "Delo", Ranepa, 2013. P. 269.

²⁴⁹ Strategy 2020: New growth model – new social policy. Final report on the results of expert work on topical issues of socioeconomic strategy of Russia for the period up to 2020 Book 1; under scientific editorship of. Mau V. A, Kuzminov Ya. I. Moscow, publishing house "Delo", 2013. Chapter 9, P. 262-277.

²⁵⁰ OECD, International Migration Outlook 2014. Paris: OECD Publishing, 2014. P. 292.

The third option – innovation economy development with prevalence of information technologies, the sphere of intellectual services that would focus on the further attraction of highly qualified foreign personnel, and the promotion and development of educational and academic immigration.

Regardless of the above options, Russia in the coming decades, as well as the members of the European Union, will need a constant influx of immigrants with different levels of qualifications to maintain economic growth. This, in turn, will require the development of a set of measures in the field of immigrants' integration.

The immigrants integration.

In the European Union, immigrant integration is an integral part of immigration policy. Despite the fact that, historically, in the EU there were different models of immigrants' integration, at community level, attempts to join the efforts in this area have been under way for a long time. It is worth noting that until the late 1990s, at the national level, the dominant idea was that immigration is purely temporary in nature and sooner or later, foreign workers will return home. However, over time it became clear that those immigrants who arrived in the EU for many years, were not going to return home, but hereby they were still poorly integrated in the host community. EU Member States are faced with similar problems that require coordination and an exchange of experience. To assist Member States in the implementation of national programmes for the immigrants' integration in 2004, the EU adopted Common Basic Principles.

According to the Common Basic Principles, integration is a bilateral process. On the one hand, among the most important tasks of the integration policy is to ensure equal access to education, health care, giving immigrants the right to work. On the other hand, immigration requires the integration and socialization of existing immigrants: their respect for the constitutional order and the observance of the laws of the host country, respect for fundamental EU values, knowledge of the language and history, the adoption of cultural and social norms

of the host country. It is noted that employment and education should be key elements of the integration process.

The next step was the development in June 2010 of single indicators of migrants' integration into the EU, within the framework of the Stockholm Programme for the development of an Area of Freedom, Security and Justice (2009-2014) based, on the same basic principles. Among the key indicators of integration of immigrants were employment/unemployment, access to education, social inclusion (income, access to health care, etc.). To assess the effectiveness of integration measures for third (non-EU) country nationals who applied to the EU Member States, the Statistical Office of the European Community, as well as research centers by order of the European Commission carried out monitoring²⁵¹. In addition, an active participation and involvement of non-commercial and charitable organizations in the immigrants' integration in the EU can bring positive experience. However, social tensions in the EU related to the presence of immigrants in recent years have only escalated. This was demonstrated in the elections of 2014 in the European Parliament, where a significant proportion of votes was received by right-wing parties that advocated stricter immigration policies (The National Front (France), The Danish people's party (Denmark)). Terrorist attacks in France in early 2015, and mass anti-immigrant demonstrations in Germany again highlight the urgency of the issues of security, religious tolerance and the effectiveness of integration measures for immigrants in the EU countries.

In the Russian Federation, the vast majority of foreign nationals belong to the category of temporarily residing, and special programs of adaptation and integration of immigrants have not yet been developed. Foreign workers, mainly from visa-waiver countries coming to Russia to work, often seek to change their status and obtain a temporary residence permit and later a residence permit or

²⁵¹ For more information: Huddleston T., Niessen J. and Dag Tjaden J. Using EU Indicators of Immigrant Integration. Final Report for Directorate-General for Home Affairs. Brussels: European Commission. 2013. P 73.

citizenship, create families, their children receive education in Russian schools. All it demands from lawmakers, the Federal migration service the new initiatives and long-term measures in the sphere of regulation of legal immigration.

In the coming years, the share of immigrants and citizens-immigrants from other countries in the EU and in Russia will only grow²⁵². Russia, as the once European States, is becoming more obvious by the fact that the immigration from the temporary turns into permanent. For now the weak point of the immigration policy of Russia can be called a landmark on the temporary and low-skilled immigration. The needs of economic, social and demographic development have resulted in a number of significant legislative changes in the regulation of migration flows. Russia, is in some aspects, trying to keep pace with other developed countries, including the countries of the EU in areas such as attracting highly qualified specialists, as well as the introduction of a compulsory examination on knowledge of the Russian language, history and culture for labour immigrants. However, the Russian legislation could be improved on several issues: further simplification of entry for foreign students, the rights and status of foreigners permanently residing in Russia, the immigrants' integration.

In this respect, the experience of the European Union certainly deserves attention, however, norms and practices existing in the EU, can be applied in Russia with restrictions. Consideration of positive and negative experiences, including in the framework of the Russia-EU Migration Dialogue, which started in May 2011²⁵³, is necessary to make a productive contribution to the development of immigration policy of Russia. It is worth noting that during the course of the dialogue, despite the extreme tension in the bilateral relations of Russia and the EU, in February 2015 an eighth specialist meeting on the protection of documents and biometrics was held. Other meetings addressed topics such as international protection, irregular migration, migration and development, legal migration.

²⁵² Coleman D. The demographic effects of international migration in Europe. Oxford Review of Economic Policy. 2008. № 24(3). P. 452-476.

²⁵³ Bisson L. C. Russia-EU cooperation in the field of migration. World economy and international relations. 2014. No. 4. P. 72-80.

§ 4. Analysis of the development of the system to attract highly qualified specialists in Russia, taking into account the EU experience

The base conditions for the formation of the system to attract highly qualified specialists in Russia, similarly to the European Union are:

- depopulation and respective decline of the working population
- the global economic crisis,
- competition in the global labour market for highly qualified labour, including the educational sphere,
- focus on the innovative development of the economy and the concomitant increase of demand for highly qualified specialists, the decline in demand for low-skilled workers,
- intensification of internal migration flows. In general, there is an influx of low-skilled resources in economically favorable regions, and the threat of social dumping in the labour market,
- the high level of illegal migration and others.

Beyond special features of the domestic situation there are the following:

- Russia faces more pressing demographic problems,
- the potential exacerbation of the intellectual emigration problem,
- the inconsistency of professional education structure to both the current and future labour market needs by the level of qualification and professional structure,
- the effect of an "internal brain drain": the transition of qualified professionals due to lack of demand for their intellectual capacity and the lack of prospects in the sphere of the activities that do not require special education,
- several authors noted the presence of corrupt and inefficient bureaucracy²⁵⁴,
- insufficient level of development of financial and housing markets,
- Russia can get skilled immigrants from former Soviet republics, most of which have the same cultural attitudes and speak Russian,

²⁵⁴ Analysis of Migration in Russia/ Andrienko Y. Guriev S.// Analytical inventions and reports, CEFIR in Russian Economic School. April 2006, № 23, p. 24.

- higher potential of inter-regional migration, which is in the framework of united state area.

Many of these problems were noted in the Concept of actions in labour market for 2008-2010, approved by the Russian Government Decree dated 15.08.2008 N 1193-p²⁵⁵. The following state policies in labour market regulation were noted as priorities: the development of the Russian legislation in the field of employment promotion; improvement of the labour market monitoring and forecasting system; ensuring a balance of vocational training and labour demand; development of regional labour markets and upgrading of the workforce's territorial transportability; human resources development; optimization of foreign labour force attraction; stimulation of economic activity of the population; improvement of jobs quality, and others. Unfortunately, measures in many of these areas remained declarative.

The necessity to resolve the existing problems, related to international migration, to set strategic priorities of migration in relation to the expected prospects of the demographic and economic development of Russia and the country's participation in the processes of globalization, was caused by the development of the draft of Concept of the state migration policy of the Russian Federation for the period up to 2025.²⁵⁶

The main migration policy objectives at this stage are:

1. ensuring the stabilization of the country's population through development of programs to attract immigrants for permanent residence,
2. satisfying the needs of the Russian economy in certain professional and qualified labour forces, necessary for economic growth, by optimizing conditions of labour migration,

²⁵⁵ «Collected legislation of the Russian Federation», 25.08.2008, N 34, 3964

²⁵⁶ Draft of Convention of State Migration Police of the Russian Federation for the period up to 2025 INO «OPORA DRUZHBI», OPORA RUSSIA Migration Policy Committee// Document is available in the Internet by link: http://www.oprf.ru/files/conception_2.pdf (date: 05.03.2017)

3. the promotion of accelerated modernization and increase of competitiveness of the Russian economy through the attraction of highly qualified foreign workers and entrepreneurs,

4. ensuring national security and geopolitical interests of Russia in the world and in the Eurasian region.

As was mentioned in this work, certain steps have been taken regarding changes in the regulatory framework to optimize the involvement of highly qualified specialists in the Russian Federation. The necessity of acts' revisions, primarily in the direction of rules' flexibility, is recognized by the FMS of Russia experts. For example, they propose to increase the selective approach to the migration of highly skilled experts and set the following differentiation of the flow of foreign workers:

- Specialists of the highest (the highest) qualification (persons with outstanding achievements or skills);

- Highly skilled workers (professionals with academic degree or workers with high qualification characteristics);

- Graduates and professionals with higher education, demanded by the labour market.²⁵⁷

The author suggests sticking to the commitment to consolidate the rules, governing the involvement of highly qualified foreign personnel in Russia. The Creation of a clear and accessible universal resource area on the Internet (which the European Union succeeded in creating), containing the thematic regulations, their availability (not only in Russian), will contribute to the growth of interest in the Russian labour market from competitors abroad.

In accordance with the Concept of the Long-Term Social and Economic Development of the Russian Federation for the period up to 2020, approved by the Decree of the Russian Government dated 17.11.2008 N 1662-p²⁵⁸, the priority

²⁵⁷ Extract from Protocol № 1 of FMS of Russia Research council meeting. M., May 30, 2011

²⁵⁸ «Collected legislation of the Russian Federation», 24.11.2008, № 47, art. 5489.

use of national staff is the fundamental principle in satisfying economic needs of the labour force. Thus, measures are in place aimed at attracting the population of compatriots living abroad back to the Russian Federation in order to compensate for the natural native decline. The State program assisting compatriots²⁵⁹ living abroad to voluntarily resettle in the Russian Federation, approved by Presidential Decree dated 22.06.2006 N 637²⁶⁰ (hereinafter – State Program), has been drafted to stimulate and organize this process.

The participants of the State program and his/her family members are provided with social and financial support²⁶¹. Public authorities of the Russian Federation establish and adopt regional resettlement programs, embodying a set of social and economic, organizational and administrative measures (and more), based on a combination of Russian national interests and the needs of the subject's area. The basis for the regional resettlement programs development is the Standard program of the subject of the Russian Federation of assistance to compatriots living abroad in voluntary resettlement to the Russian Federation, adopted by the Federal Government in August 24, 2006 N 1172-p²⁶². Moreover, regional programs should be linked to the main; there is a necessity in the assessment of the social and economic status of a subject of the Russian Federation and its development prospects, assessment of the demographic situation in the region and providing of analysis of the situation on the labour market.

Unfortunately, according to official data of the FMS of Russia, the number of compatriots who arrived in the Russian Federation in the framework of the state program is small in comparison with the expected rates, due to the limited choice

²⁵⁹ According to Federal Law dated May 24, 1999 N 99-FZ «On State Policy of the Russian Federation concerning compatriots abroad» compatriots are persons, who was born in the same state, live or used to live in it and have common language, religion, cultural heritage, traditions and customs, as well as these persons' heirs of line.

²⁶⁰ «Russian Newspaper», N 137, 28.06.2006.

²⁶¹ Decree of the Government of the Russian federation dated March 10, 2007 N 150 «On procedure for payment of transport expenses to participants of the State program on assistance in voluntary migration of compatriots living abroad to the Russian federation».

²⁶² «Collected legislation of the Russian Federation», 28.08.2006, N 35, art. 3788.

of the residence area (19 subjects of the Federation), inadequate amounts of compensation payments, the unresolved issues of housing and other factors.

Experts note²⁶³ the need for serious information support among the most important factors of the State program implementation. An indicator of the importance of this issue is the fact, that the Action Plan for the information support of the State program is approved by the legal act of the Russian Government. In particular, the Action Plan for the information security of the State program for 2010-2012 was approved by the Resolution of the Russian Government dated June 17, 2010 № 456²⁶⁴.

The information security problem, which has been successfully solved in the European Union, is essential for the considered policy in general. Research, aimed at a comprehensive definition of the degree of sectoral and regional staffing of human resources (compiling of labour balance), is almost not conducted nowadays. In addition, there is no comprehensive mechanism of functioning of a territorial distribution of immigrants.

There is a need for the establishment of a shared accredited mediation center to attract qualified foreign experts, similar to the Blue Card International Employment Centre, in order to implement the legislation. Such a center will significantly promote the attraction of qualified resources (opportunity to get systematic and understandable information about work in Russia in advance); will provide a solid long-term relationship with candidates (building of candidates database, informing them, possibility of rapid communication); may create a new outlook on life and work in our country (opportunities, security, support, reliability, rich traditions) and will provide them with an opportunity to promptly respond to the needs of the Russian Federation for skilled resources.

The questions of immigrants' adjustment and integration in Russia still remain unresolved. Analysis of international experience shows that conduct of

²⁶³ Extract from Protocol № 1 of FMS of Russia Research council meeting. M., May 30, 2011

²⁶⁴ «Collected legislation of the Russian Federation», 28.06.2010, N 26, cr. 3356.

this work is a significant part of the policy of attracting labour resources. For achievement of maximum results, it is important to work at historical, cultural and religious differences, specific to a number of immigrants' nationalities, as well as at the current lack of infrastructure, needed for adjustment and integration of immigrants into Russian society, and effective administrative and legal mechanisms for solutions to these issues.

Social and economic integration of immigrants includes the following major components²⁶⁵.

Labour integration. Establishment of a system of continuous education and vocational training of workers, including immigrant workers. Such a system will allow the adjustment of workers' labour skills in accordance with the labour market needs, will ensure demand for specialists up to retirement age, involve foreign labour in the Russian education system (this work describes projects, implemented in the EU).

Housing arrangement. The vast majority of immigrants entering the country needs assistance with housing arrangements. Highly qualified specialists may be provided with a place for living for rent on favorable terms. As an alternative, taking into account tough economic criteria for the definition of "highly qualified specialist" status, it is advised to include the employer's costs of the applicant residing in the overall "compensation package", equated to the criteria of professional income when submitting documents to migration authorities.

Adjustment to language environment. The importance of this kind of migration in Russia increases and assumes clearer and more independent meaning as post-Soviet migration flow dries up and the Russian speaking population ceases to be dominant in the migration flow. The EU Member States' experience shows, that learning of the national language is one of the premium actions of immigrants' and their family members' integration.

²⁶⁵ Migration as a factor of development of small and medium-sized enterprises and Russian economy. Independent noncommercial organization «OPORA-DRUZHBA»// Document is available in the Internet by link: http://www.opora-druzhba.ru/upload/iblock/Digest_opora.pdf (date:04.02.2016)

Cultural integration. Development of the method of foreign workers' integration into Russia should take into account specifics of arriving labour resources – the level of cultural distance. Capability of the post-Soviet country nationals and compatriots to integrate into the receptive society is high in contrast to the integration of citizens of other states. The approach to settlement of these issues should be differentiated, depending on the category of immigrants: with respect to compatriots, who arrived for permanent residence in the Russian Federation, we are talking about full integration, while in relation to foreign citizens going to Russia it is better to put the question about their adaptation rather than integration.

As a rule, workers arriving from abroad have poor knowledge about cultural heritage and the history of Russia and fundamental principles of the Russian legislation. Most work in development and implementation of the migration policy in the Russian Federation is performed by All-Russian Public Organization of Small and Medium-Sized Enterprises "OPORA RUSSIA", namely the Committee of OPORA RUSSIA on migration policy and non-profit organization "OPORA DRUZHBA"²⁶⁶. "We make active use of information channels of our friendly organizations abroad, what is more, on their basis, as well as on the basis of foreign missions of OPORA international network of information centers is being created. Using them, you can get detailed information about the conditions of organizing and doing business in Russia, employment procedure, vacant jobs. Moreover, active dialogue with embassies and business associations of foreign countries is also important ", - said Sergey Borisov, the president of "OPORA RUSSIA"²⁶⁷. The organization together with the Russian Geographical Society also presents Russia as a unique country for exploring and creates a project on tourist leisure activities for foreigners, working in our country.

²⁶⁶ Organizations' official websites: <http://opora.ru/> and <http://www.opora-druzhba.ru/> (date:04.02.2016)

²⁶⁷ Published in «Russian Newspaper – Business» № 763 dated August 17, 2010

A separate area of building of the system for the attraction of highly qualified specialists in Russia is support of educational migration. In the era of globalization the educational migration is one of the main sources of attraction of trained foreign professionals, well-integrated in the receiving society, including permanent residence. As noted in the research digest "Migration as a factor of development of small and medium-sized businesses and the economy of Russia", it is necessary to increase the intake of students from other countries, mainly from the CIS countries, for training in state educational institutions of higher professional education in the Russian Federation. To provide financial support for education, it is necessary to develop credit schemes, raise funds of future employers for payment of foreign students' education. In order to facilitate efficient integration, it is appropriate to enable foreign students to study in Russia and provide them with the opportunity to work on the same basis as the Russian students. The EU achieved great success in regulation of this issue.

The aforementioned directions are like a "roadmap" for the development of the integral system of qualified resources' attraction on the Russian labour market.

The development of the social security system, flexible education system, connected with the real demand, ensuring competitive working conditions, improvement of life quality in general will primarily provide with an opportunity to reduce intellectual migration from Russia.

Summary

In conclusion, the author expresses their concerns over the fact that even with existing programmes, laws and institutions' immigration policy in different parts of Europe is still lacking efficiency.

Answering the questions stated at the start of the thesis, it is worth noting that there is an urgent need to regulate migration flows at the EU level. The key is holding the European Union common policy, adequate to modern realities, to create a systematic mechanism "input" and "adaptation" of immigrants in the EU.

Having considered the situation with immigration of persons into the European Union, we should specify its complexity. However, in the case of a proper mechanism of control over immigration flows and integration of immigrants, it is possible to stabilize the situation in the European society. The main question is how this mechanism should be developed. Mass immigration in fact can turn into a serious destabilizing factor, because it is not fictional, but a real danger. However, panic is not the most adequate measure of the behavior in this case. On the contrary, it is necessary to think over the improvement "of the immigration valve", its "capacity", and on the migration capacity of states in the EU.

Opponents of migration indicate that the majority of immigrants belong to a different ethnic group, and in connection with numerous cultural and mental differences are not able to harmoniously integrate into the European society.

Undoubtedly, the ethnic "wall" hampers understanding between people. But are there not similar difficulties in the interaction of the indigenous inhabitants of the capital and people from rural areas, educated and illiterate, rich and poor, even if they grew from the same ethnic root?

It cannot be expected that that the problems associated with the integration of immigrants into the European society will be resolved automatically and without conflict. But that only points to the importance of elaboration and implementation of a far-sighted immigration strategy.

The EU Member States will have to build a complex and probably expensive system of "support" for the newcomers, their training, involvement in the European cultural community. Moreover, the regulation must be exercised at the supranational and national level in the absence of contradictions between them.

It would be a mistake to perceive the position of a number of leaders about depriving migrants of certain rights in which would be exclusively vested the indigenous inhabitants of the EU. The creation of antagonism in no way can promote the efficient policy of balancing the European society (at least in demographic terms).

Having examined the main directions of immigration policy of the EU in their dynamics, it is necessary to draw a conclusion about the changing trends in the regulation of the immigration issue in the European Union. Previously we had to talk about the dominance of enforcement in immigration policy. Regulation has primarily concerned the repatriation of illegally arriving immigrants into the EU, external border protection and carrying out effective measures to prevent the infiltration of persons from third (non-EU) countries into the EU. Currently all these areas are evolving, with more emphasis on arranging the order of work with legal migrants, as well as the integration of already residing in the EU immigrants. The implementation of certain steps in this direction is a positive measure towards establishing a common immigration policy, but it is necessary to create additional programs for promoting it.

For example, taking into account manpower demand in the EU, it would be rational to organize these relations in the European society by creating a thought-out document – similar to the "Blue Card" program, but for the base workers (not highly qualified professions). At the same time, based on the findings of the research, it can be argued that this single measure is not able to solve the immigration issue completely. We should not simplify the problem: differences in language, cultural, religious, household traditions, which often serve as a source of mutual misunderstanding, complicate the interaction between people. But, in addition, active migration from developing countries means that the bulk of the

"alien" population is concentrated in the bottom of the social pyramid. Perhaps this is the main difficulty, which increases with increasing the scale and the speed of migration.

In this regard, of particular importance is the question of the integration of immigrants into European society. Justifying the conclusion that currently the main form of integration policy in the EU is the integration with a predominance of elements aimed at long-term assimilation (in the background of the abandonment of the policy of multiculturalism in the Canadian sample).

In this paper we examined immigration issues, both at supranational and national level. At the national level of regulation necessary to consider that at the present stage the rejection of the "nation-centric" worldview is essential in the formation of an effective state migration policy.

It is obvious that such changes will require quite a long time, since they must touch not only the state concept towards the migration regulation, but also the perception of the level of common people. In this light, the formation of the nation-co-citizenship not only at the EU level but in individual states in the EU is seen as a positive tendency.

Following consideration of the claimed subject matter, it should be stated that it is necessary to achieve a *comprehensive* solution on immigration in the European Union: the implementation of a comprehensive regulation, both at the political and legal level; unification of efforts of all EU Member States to develop a common migration policy; promotion of agreements with third (non-EU) countries – suppliers of illegal immigrants; the development of the institutional and material base for the immigrants integration into the European society, etc.

Accordingly, the Russian side should work in cooperation with the EU. Cooperation between Russia and the EU in addressing common problems of immigration manifesting in a continuous dialogue. Now it is necessary to ascertain the initial stage of cooperation towards solving the immigration issue.

Institutional frameworks for cooperation between the parties are established: the cooperation agreement with FRONTEX, EUROPOL with authorities of the

Russian Federation; work in the framework of the EU-Russia Permanent Partnership Council. Thus, for example, real large-scale border cooperation between Russia and the European Union is currently absent. It is important to involve the EU in the protection of not only joint, but especially of the problematic borders of the Russian Federation, which serve as "gates" for illegal immigrants, the ultimate goal of whom is sometimes the EU.

Another important aspect of cooperation is to build a thoughtful dialogue on visa issues between the EU and Russia. The key in this process is the curbing of excessive politicization of the visa issues. Many of the difficulties in this direction can be lifted when using the existing framework of the simplification of border-crossing. Instead of the insistent proposals on the complete simplification of the visa regime for Russian citizens when entering the EU, it is more effective, for example, to support of the idea of granting long-term visas for a year or more.

Based on the results of the current thesis it's important emphasize that Russian immigration legislation was built quite well, but at the same time, work needs to be done on practical aspects of the realization of this policy.

In order to develop Russian and EU immigration legislation, it's necessary to set up organizational and legal mechanisms of harmonization of law. Russia should develop the program of harmonization of immigration law.

At the same time, Russian law should only accept the examples of EU legislation that are applicable to Russian reality.

Analyses of current trends in the labour markets of the European Union and Russia have identified the increasing demand for highly skilled specialists in conditions of economic crises and rising unemployment not only in the EU but also in Russia. Competition for qualified personnel has reached an international scale.

Russia is at the initial stage of reform in the employment of skilled foreign labourers. In view of similar demographic, territorial and cultural conditions of Russia and the Union, as well as close economic ties, the EU's experience in this

part of the subject matter is very relevant for study and practical use taking into account the peculiarities of Russia.

The paper presents a comprehensive analysis of the regulation of employment of skilled specialists from third countries to the European Union, and in particular describes in detail the provisions of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (The "EU Blue Card Directive") and its implementation system since June 2011.

In addition to the European Union legal acts the related methods and measures aimed at the reproduction of qualified labour resources: issues of family reunification, joint educational programmes, Europass, etc were also investigated.

The body of legislation on the foreign highly qualified employment in Russia was also considered. The attention is focused on the amendments to the Federal Law No. 115-FZ dated 25 July 2002 "On Legal Status of Foreign Citizens in the Russian Federation" and the introduction of the concept of "highly qualified specialists" from July 2010. The supplementary activities were studied: The State program on rendering assistance to voluntary resettlement to the Russian Federation of compatriots, the infrastructure required to ensure adaptation and integration of immigrants into Russian society and so on.

The remarkable thing is that the latest reforms in Russia are of a progressive nature, however, assessing the EU experience, it seems appropriate to make the following adjustments to domestic legislation and the establishment of the system of foreign highly qualified employment in Russia:

To approve the draft concept of state migration policy of the Russian Federation for the period till 2025, developed by the nonprofit organization "OPORA DRUZHBY" (АНО «ОПОРА ДРУЖБЫ»), as the basic guiding document;

To systematize and consolidate regulations and requirements in the sphere of employment of highly qualified foreign specialists, or to develop a guiding act

that is similar to the EU Blue Card Directive. In parallel, to provide access to legislation via a specific resource on the Internet, including in a foreign language;

To adjust the criteria for the status of "highly qualified specialist" by shifting the focus from the financial component in favor of interim measures and needs, or to differentiate the flow of highly skilled professionals in a number of categories taking into account the interests of business and the regions in need (may be combined with the annually published list of labor requirements);

To review the limitations established in the legislation of the Russian Federation for the employment of highly qualified foreign specialists who are employees of retail trade organizations;

To develop guarantees for family members of highly qualified specialists;

To draw attention to the obligatory personal receipt of a work permit by a foreign employee in the migration authorities;

To replace the need to inform the executive authority in the migration sphere about the performance of the obligations of the employer on a quarterly basis by the possibility of referral of the employee to the competent authorities in case of violation of obligations;

To create a single accredited mediation centre for employment and support of highly qualified foreign specialists by analogy with the Blue Card International Employment Center;

To solve the problem of information support by conducting research aimed at a comprehensive determination of the staffing level of sectoral and regional labor resources (budget of labor);

To create the infrastructure necessary to ensure adaptation and integration of immigrants into Russian society, and effective legal and administrative mechanisms (work integration, housing, cultural adaptation and integration, etc.);

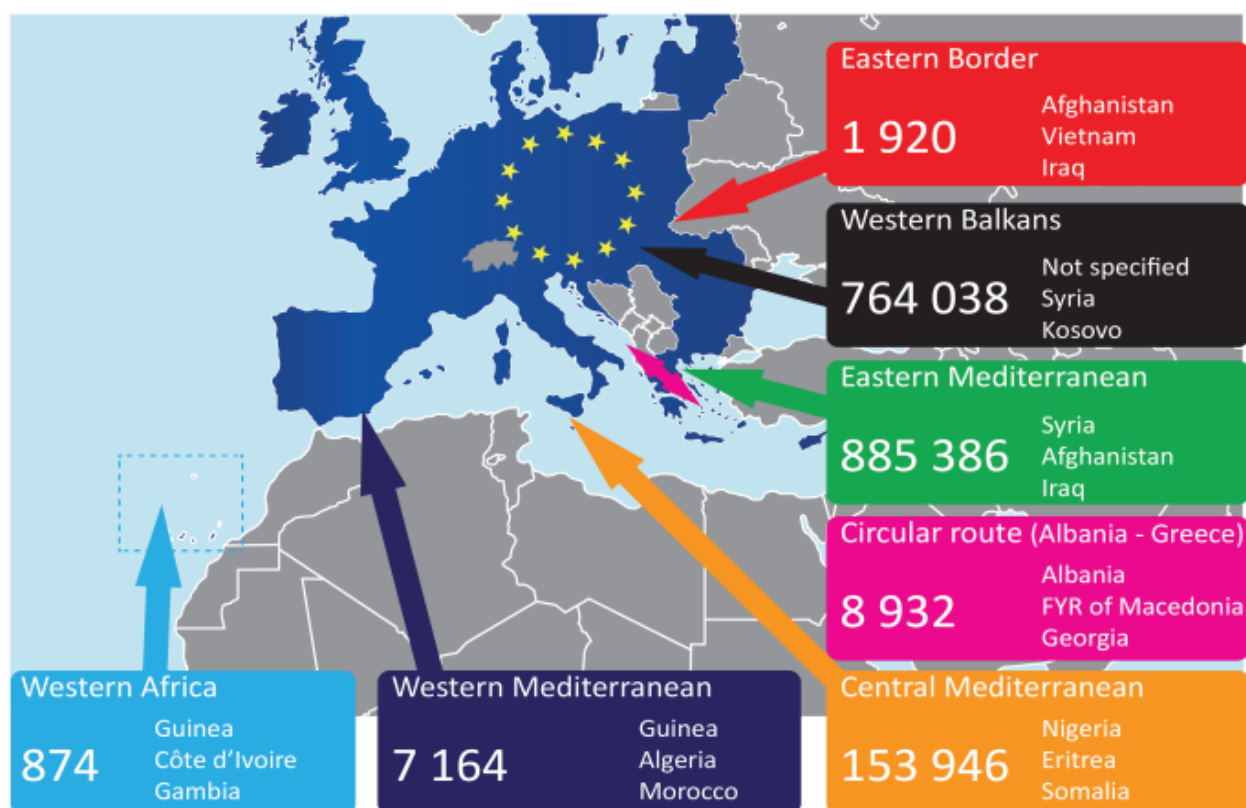
To introduce an analogue of Europass to integrate Russian citizens to the European system and to enhance the internal mobility of labor resources;

To strengthen the bond between the labour market and education.

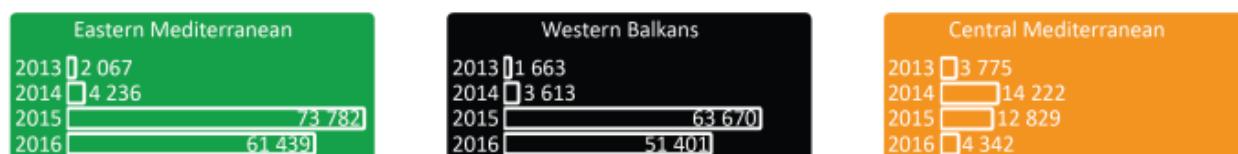
As Russia is a part of the global world, the outflow of skilled resources is to some extent inevitable. The aim of the legislator is to transform possible intellectual emigration in the field of intellectual exchange. The win-win strategy instead of zero-sum game with the countries-importers of the Russian intellectual resources is possible if a significant proportion of migrants return to Russia after work (study) abroad. It will be a transfer not only of individual skills and education, but also of innovative solutions and technologies. Recognizing the experience of the European Union in changing legislation and improving the system of employment of skilled workers in Russia will help the Russian Federation to compete in the international market of skilled labor forces.

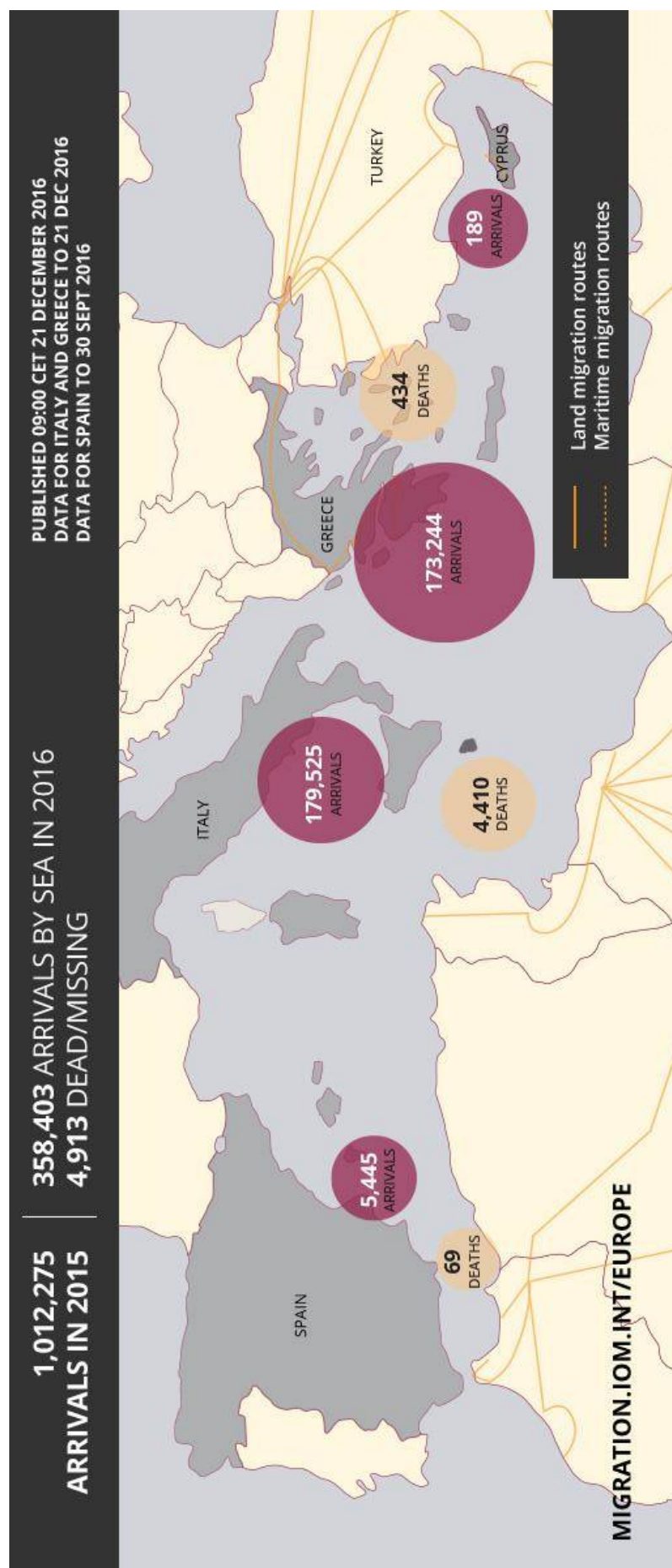
While the migration problems are playing an increasingly important role, it is necessary to establish a qualitatively new level of relations between Russia and the European Union.

Detections of illegal border crossings in the EU (2015)

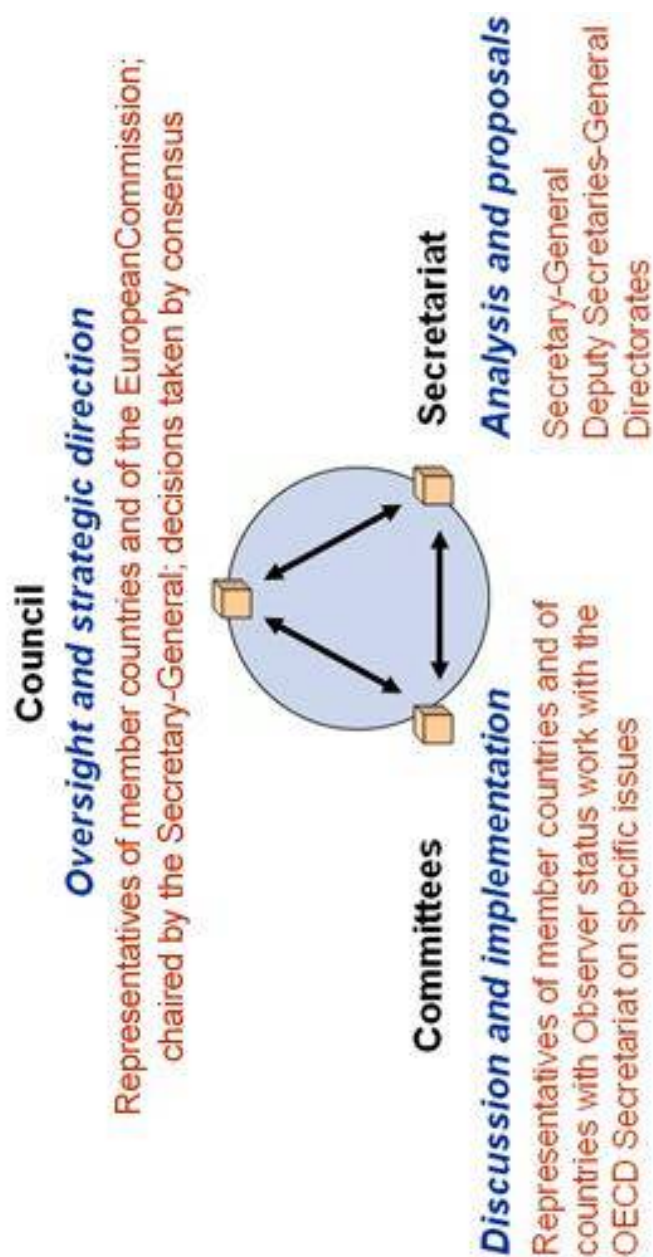


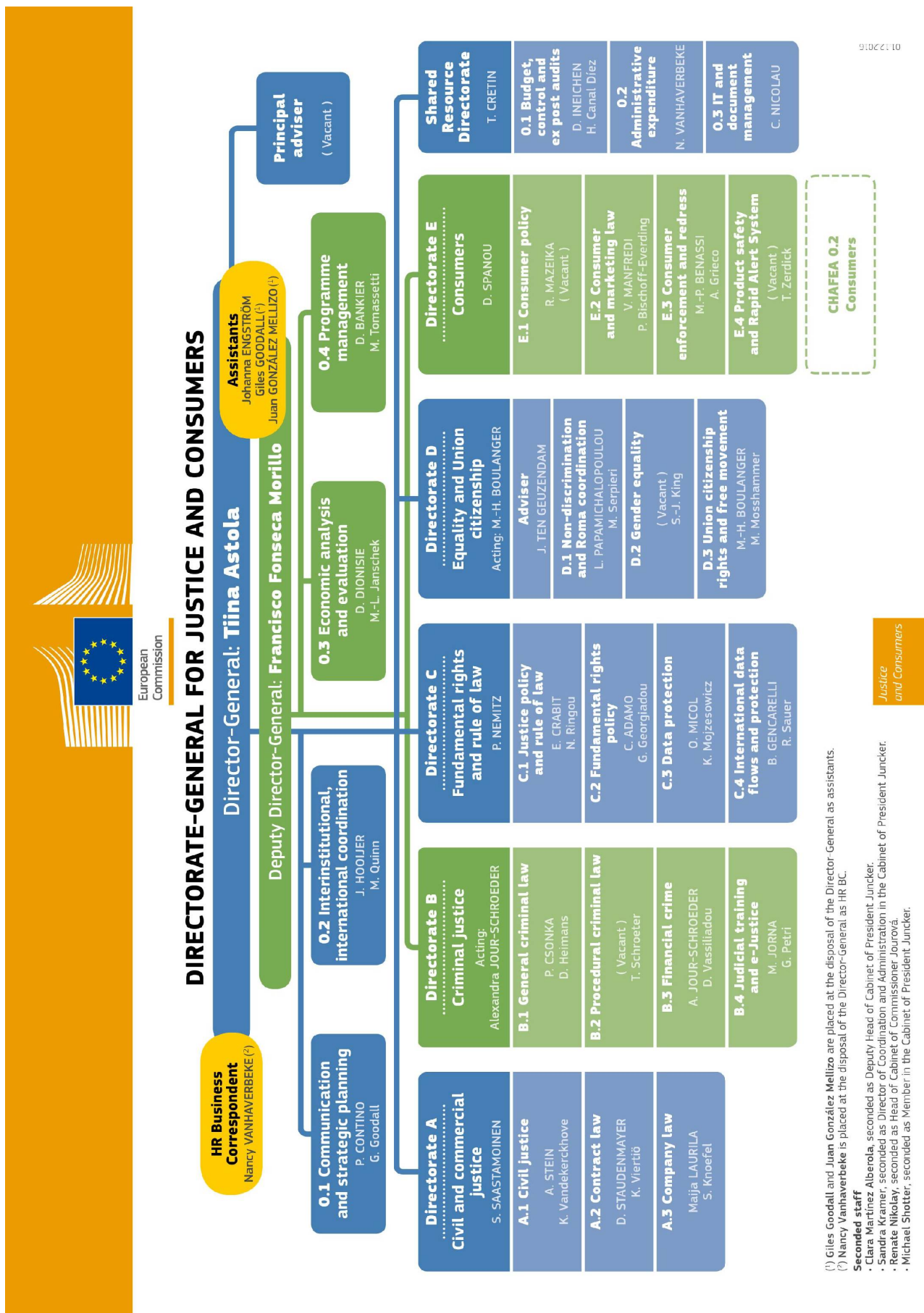
Monthly average number of detections of illegal border crossings in the EU



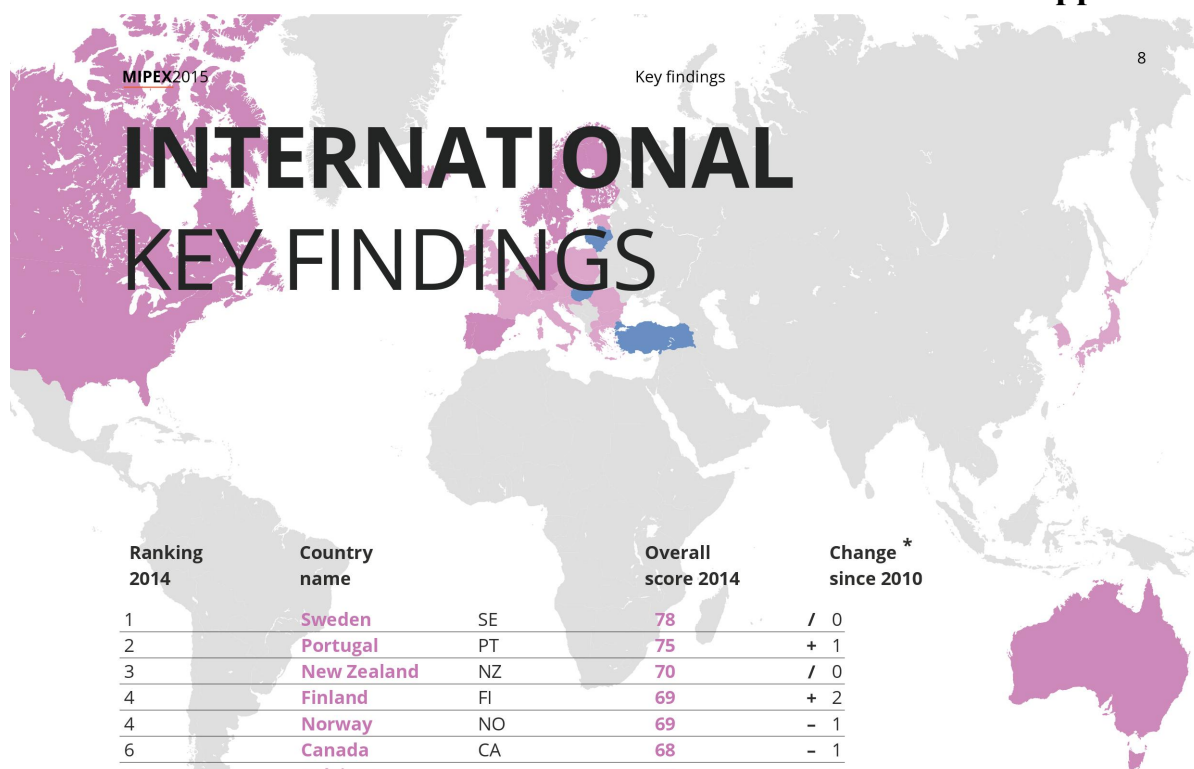


Who drives the OECD's work?





01.12.2016



Ranking 2014	Country name		Overall score 2014	Change * since 2010
1	Sweden	SE	78	/ 0
2	Portugal	PT	75	+ 1
3	New Zealand	NZ	70	/ 0
4	Finland	FI	69	+ 2
4	Norway	NO	69	- 1
6	Canada	CA	68	- 1
7	Belgium	BE	67	+ 2
8	Australia	AU	66	/ 0
9	USA	US	63	+ 1
10	Germany	DE	61	+ 3
11	Netherlands	NL	60	- 8
11	Spain	ES	60	/ 0
13	Denmark	DK	59	+ 10
13	Italy	IT	59	+ 1
15	Luxembourg	LU	57	+ 2
15	United Kingdom	UK	57	- 6
17	France	FR	54	+ 1
18	South Korea	KR	53	- 1
19	Ireland	IE	52	+ 1
20	Austria	AT	50	+ 3
21	Switzerland	CH	49	+ 1
22	Estonia	EE	46	+ 1
23	Czech Republic	CZ	45	+ 3
23	Iceland	IS	45	/
23	Hungary	HU	45	+ 1
23	Romania	RO	45	+ 1
27	Greece	GR	44	- 2
27	Japan	JP	44	+ 1
27	Slovenia	SI	44	/ 0
30	Croatia	HR	43	/
31	Bulgaria	BG	42	+ 3
32	Poland	PL	41	+ 5
33	Malta	MT	40	+ 2
34	Lithuania	LT	37	+ 1
34	Slovakia	SK	37	/ 0
36	Cyprus	CY	35	/ 0
37	Latvia	LV	31	+ 2
38	Turkey	TU	25	+ 1

80 - 100 - Favourable
 60-79 - Slightly favourable
 41-59 - Halfway favourable
 21-40 - Slightly unfavourable
 1-20 - Unfavourable
 0 - Critically unfavourable

* Without health

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